

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

DOCKETED TERM, 1910.

No. 897

ORIENT INSURANCE COMPANY ET AL, PLAINTIFFS IN
ERROR.

THE BOARD OF ASSESSORS FOR THE PARISH OF
ORLEANS, THE CITY OF NEW ORLEANS AND JOHN
WATZPATRICK, STATE TAX COLLECTOR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED DECEMBER 21, 1909.

(21,949)

(21,949)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 723.

ORIENT INSURANCE COMPANY ET AL., PLAINTIFFS IN
ERROR,

vs.

THE BOARD OF ASSESSORS FOR THE PARISH OF
ORLEANS, THE CITY OF NEW ORLEANS, AND JOHN
FITZPATRICK, STATE TAX COLLECTOR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

INDEX.

| | Original. | Print |
|--|-----------|-------|
| Caption | a | 1 |
| Proceedings in civil district court for the parish of Orleans | 1 | 1 |
| Detailed list of all docket entries. | 1 | 1 |
| Petition for cancellation or reduction of assessment..... | 2 | 2 |
| Answer of defendants..... | 6 | 4 |
| Motion to consolidate | 8 | 6 |
| Testimony and notes of evidence..... | 10 | 7 |
| Testimony of C. Taylor Gauche..... | 12 | 8 |
| J. D. Kitchen..... | 27 | 17 |
| Earl E. Wright..... | 38 | 25 |
| Peter F. Pescud..... | 47 | 30 |
| D. R. Buchanan..... | 51 | 32 |
| H. S. Eustis..... | 52 | 33 |
| George S. Kausler | 53 | 34 |
| M. Frishman..... | 55 | 35 |
| Agreement as to evidence..... | 57 | 36 |
| Letter from H. G. Dupre, assistant city attorney, to Harry H. Hall, dated December 10, 1908 | 58 | 37 |

| | Original. | Print |
|--|-----------|-------|
| Testimony of C. C. Swayze..... | 61 | 38 |
| Testimony of Harry H. Hall..... | 63 | 39 |
| Admission of Liverpool & London & Globe Insurance Co..... | 67 | 41 |
| Motion to set case for argument..... | 67 | 42 |
| Plea of prescription..... | 68 | 42 |
| Agreement of counsel as to plea of prescription..... | 69 | 43 |
| Agreement of counsel as to evidence..... | 69 | 43 |
| Exhibit D ¹ —Blank for taxes on movable property..... | 71 | 44 |
| Exhibit D ² —Blank for delinquent taxes on movable property.. | 72 | 45 |
| Judgment of the civil district court..... | 73 | 46 |
| Stipulation and agreement of counsel as to statement of assess- ments for years 1906, 1907, and 1908..... | 75 | 48 |
| Judgment signed (extract from minutes)..... | 78 | 52 |
| Motion for a new trial..... | 78 | 52 |
| New trial refused..... | 79 | 52 |
| Motion for a suspensive appeal..... | 79 | 53 |
| Appeal bond..... | 80 | 54 |
| Exhibit "A" annexed to bond—Names of insurance companies. | 81 | 54 |
| Exhibit—Sample copy of petition..... | 82 | 55 |
| Clerk's certificate..... | 86 | 57 |
| Transcript filed..... | 88 | 58 |
| Answer to appeal..... | 88 | 58 |
| Called, argued, and submitted (extract from minutes)..... | 89 | 59 |
| Final judgment (extract from minutes)..... | 90 | 60 |
| Opinion of the court..... | 91 | 60 |
| Petition for rehearing..... | 95 | 63 |
| Rehearing refused (extract from minutes)..... | 98 | 65 |
| Statement of taxes..... | 98 | 65 |
| Petition for writ of error..... | 99 | 66 |
| Order granting writ of error..... | 104 | 69 |
| Assignment of error..... | 104 | 69 |
| Writ of error (original)..... | 109 | 71 |
| Writ of error (copy)..... | 111 | 73 |
| Bond for writ of error..... | 113 | 74 |
| Clerk's certificate..... | 115 | 75 |
| Chief Justice's certificate..... | 116 | 76 |
| Citation to Board of Assessors..... | 117 | 76 |
| Citation to City of New Orleans..... | 119 | 78 |
| Citation to State Tax Collector..... | 121 | 79 |

a UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

No. 17713.

ORIENT INSURANCE COMPANY and Others, Plaintiffs in Error,

versus

BOARD OF ASSESSORS and Others, Defendants in Error.

Hall & Monroe, for Plaintiffs in error.

George H. Terriberry, H. Garland Dupré, F. C. Zacharie, and Harry P. Sneed, for Defendants in error.

Writ of Error to the Supreme Court of the State of Louisiana from the Supreme Court of the United States of America, returnable at the city of Washington, D. C., within thirty days (30) from the 17th day of December, A. D. 1909.

Transcript of Record.

1 STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Civil District Court for the Parish of Orleans.

Detailed List of all Docket Entries, in Chronological Order, from the 7th Day of August, 1908 (the Day on Which the Petition of Plaintiff was Filed), to the 18th Day of May, 1909 (the Day on Which a Sample Copy of Plaintiff's Petition was Filed by Plaintiff), inclusive.

Division "C," Civil District Court.

No. 86833.

ORIENT INSURANCE COMPANY

vs.

BOARD OF ASSESSORS et al.

1908.

August 7. Petition.

Oct. 13. Answer of Board of Assessors, et al.

28. Motion to consolidate.

1909.

Jan. 21. Order fixing case for argument.

22. Plea of prescription.

Mar. 8. Agreement and 2 documents.

Notes of evidence and duplicate.

Three reports of Sec'y of State.

Submitted.

18. Answer of Board of Assessors.
 29. Stipulation.
 Judgment.
 May 5. Judgment signed.
 6. Rule for new trial.
 New trial refused.
 12. Motion of appeal.
 13. Appeal Bond.
 18. Exhibit.

2 STATE OF LOUISIANA,
 Parish of Orleans, City of New Orleans:

Civil District Court for the Parish of Orleans.

Petition for Cancellation or Reduction of Assessment.

Filed August 7, 1908.

Civil District Court, Division "C."

No. 86833.

ORIENT INSURANCE COMPANY
 vs.
 BOARD OF ASSESSORS et al.

To the Honorable the Judges of the Civil District Court for the Parish of Orleans:

The petition of Orient Insurance Company a corporation organized under the laws of the State of Connecticut, and domiciled in Hartford, with respect represents:—

That the Board of Assessors for the Parish of Orleans, arbitrarily, illegally and in utter disregard for their official obligations, made against your petitioners, for the respective years named, the following pretended assessments:—

Money loaned on interest, all credits and bills receivable
 3 for money loaned on interest or advanced, or for goods sold.

For 1906, the sum of \$15,000.

For 1907, the sum of \$15,930.

For 1908, the sum of \$15,930.

And for "Cash or money in possession"

For 1906, \$1000.

For 1907, \$1450.

For 1908, \$1450.

Now, your petitioner avers that it had not, in any of the years named, in this City or State, any "Cash or money in possession."

That the only credits, of any kind, for money due to it were uncollected premiums, due, under open account, for premiums on insurance policies issued from its domicile; and your petitioners aver that no legal assessment thereof can be made, nor any tax thereon

legally collected, and that all of such assessments are illegal, null and unconstitutional, for the following among other reasons, to-wit:—

I. The Legislature has not the power to localize an abstract credit away from the domicile of the creditor, the State power of Taxation being limited to persons, property or business within its jurisdiction.

II. The levying of a tax upon incorporeal things, such as abstract credits, not in so-called concrete form, and without tangible shape, violates the Fourteenth Amendment of the United States Constitution.

III. The Revenue Acts of the State of Louisiana do not purport or pretend to authorize the assessment or the levy of a tax upon premiums due to foreign insurance companies under open, unliquidated accounts.

IV. The Constitution of the State of Louisiana prohibits the collection of taxes by suit, and, inasmuch as such open accounts cannot be seized for taxes, and could only be collected by suit, such suit and such collection would violate Article 232 of said Constitution.

V. The Legislature by Act 170 of 1906, has affirmed the interpretation by the Supreme Court of Louisiana of its Revenue Acts by declaring that all evidence of indebtedness shall be taxable only at the situs or domicile of the owner thereof.

VI. The illegal assessment on which the tax claimed is based is absolutely void because it is so grossly excessive as to be inconsistent with an honest judgment, and is so unequal and discriminating as to violate the fundamental law.

In making said illegal assessment, the Board of Assessors did not exercise fairly and intelligently the powers conferred upon them, but they arbitrarily and illegally took as the basis for said pretended assessment of such insignificant amount of uncollected premiums as might be outstanding, at the end of the year, the total sum of the gross premiums earned by respondent on all of its policies for the entire year.

Respondent avers that the said Board of Assessors refused to hear or to consider respondent's sworn application for a reduction stating that, inasmuch as the question of the legality of the tax was pending before the Courts, it would be a waste of time to consider the application for reduction of an assessment which might be altogether null; and Respondent avers that the Committee on the Revision of Assessments took the same position and declined to hear respondent or consider the question of the real value of its assessments; that the said Board and Committee never considered the real value or amount of the said premiums, nor attempted to ascertain the same. And, because of these acts and refusal, respondent avers that the said assessment is null and void.

Your petitioner avers that, for the year 1906, it made no return for assessment or taxation on these open accounts, the same never having before been assessed, and that it was not aware of the said assessment until too late to apply for the cancellation thereof.

That for the years 1907 and 1908 it made due return and due application, and complied with all the requirements of the law, making its return under protest, denying that any legal assessment thereof could be made or taxes collected, and making its return solely for the purpose of limiting the correct amount of the tax thus sought to be collected should the Court maintain its legality, which legality was denied; and that thus, under protest, it returned or had:

For year 1906, uncollected premiums \$2529.45.

For 1907, uncollected premiums \$1044.38.

For 1908, uncollected premiums \$2398.75.

Wherefore, your petitioner prays that the Board of Assessors for the Parish of Orleans, the City of New Orleans and the State Tax Collector for the First District be cited to appear and answer this petition, and that, after due proceedings had, there be judgment in your petitioner's favor and against the said defendants, decreeing that the said assessments of credits, bills receivable cash on hand and money in possession, and all taxes thereunder, be declared to be illegal, unconstitutional, null and void, and that the same be ordered cancelled from the assessment rolls for the respective years 1906, 1907 and 1908; and that, in the alternative, should the said assessment be held to be legal, the amounts of the said assessments be reduced.

For 1906 to \$2529.45.

For 1907 to \$1044.38.

For 1908 to \$2398.75.

Petitioner prays for all general and equitable relief.

(Sg.)

HALL AND MONROE, *Attorneys.*

August 1908.

(Sg.) HALL AND MONROE, *Att'ys.*

Answer of Defendants.

Filed October 13th, 1908.

Civil District Court, Division "C."

No. 86833.

ORIENT INSURANCE COMPANY

vs.

BOARD OF ASSESSORS et al.

Now into Court, through their undersigned counsel, come Board of Assessors for the Parish of Orleans, City of New Orleans and John Fitzpatrick, State Tax Collector, and except to plaintiff's demand for a reduction of the amount of the assessment for the years 1906 and 1907, and for cause and grounds of said exception show that plaintiff's petition in this respect discloses no cause or right of action, said

demand not having been judicially made within the time prescribed by law—that is, Section 26 of Act 170 of 1898.

Wherefore, defendants pray that this exception be maintained and that plaintiff's suit, in so far as it seeks to have the assessments for the year- 1906 and 1907 reduced, be dismissed, with ten per centum attorney's fees, as provided by Section 57 of Act 170 of 1898, and for costs and general relief.

And now, if the foregoing exception be overruled, defendants, reserving all their rights thereunder, and in no wise abandoning same, deny all and singular the allegations in plaintiff's petition contained.

Further answering, defendants show that plaintiff is estopped to contest the correctness of the amount of the assessments for the years 1906, 1907 and 1908 by reason of its failure in each of said years to make return of its property, duly sworn to, as required by Section 25 of Act 170 of 1898, which estoppel is herein specially pleaded.

7 Further answering, defendants show that plaintiff is also estopped to contest the correctness of the amount of the assessments for the year- 1906, 1907 and 1908 by reason of its failure in each of said years to make seasonable application to the Board of Assessors for abatement of said assessments, which estoppel is herein specially pleaded.

Further answering, defendants show that plaintiff is estopped to contest the correctness of the amount of the assessments for the years 1907 and 1908 by reason of its failure in each of said years to appeal to the Committee on Budget and Assessment of the City Council of New Orleans for abatement of said assessments, in accordance with Section 26 of Act 170 of 1898, which estoppel is herein specially pleaded.

Further answering defendants show that the said assessments are just and fair in amount and are not excessive; that said assessments for both cash and open accounts, credits, bills receivable for money loaned on interest or advanced, or for goods sold were made in accordance with Section 7 of Act 170 of 1898, which provides that no non-resident, either by himself or through any agent, shall transact business here without paying to the State a corresponding tax with that exacted of its own citizens, and all bills receivable, obligations or credits arising from business done in this State are assessable within the State and at the business domicile of said non-resident, his agent or representative; that said Section 7 of Act 170 of 1898 in no wise violates the Constitution of the State of Louisiana or the Constitution and laws of the United States.

Further answering, defendants particularly deny that the Board of Assessors refused to hear or to consider plaintiff's sworn application for reduction, and on the contrary, show unto the Court that the allegation in plaintiff's petition contained, to the effect that the

8 Board of Assessors refused to hear or to consider plaintiff's sworn application for a reduction and the further allegation that the Committee on the Revision of Assessments of the City Council took the same position and declined to hear plaintiff

or consider the question of the real value of its assessments, are absolutely and unqualifiedly untrue and without foundation in fact or law.

Wherefore, the foregoing exception, the special pleas of estoppel, and the answer hereto considered, defendants pray to be hence dismissed with costs and ten per cent attorney's fees for the attorney for the State Tax Collector as provided by Section 57 of Act 170 of 1898, and for all equitable and general relief.

(Sg.)

GEO. H. TERRIBERRY,

Attorney for Board of Assessors.

H. G. DUPRE,

Asst City Att'y for City of New Orleans.

F. C. ZACHARIE,

Attorney for State Tax Collector.

HARRY P. SNEED, *Of Counsel.*

Motion to Consolidate.

Filed Oct. 28, '08.

Civil District Court, Division "C."

No. 86833.

ORIENT INSURANCE COMPANY

VS.

BOARD OF ASSESSORS et al.

| | |
|---|-----------|
| Orient Insurance Company | No. 86833 |
| Hanover Fire Insurance Company..... | 86837 |
| Atlantic Home Insurance Company..... | 86840 |
| Royal Insurance Company of England..... | 86847 |
| 9 London & Lancashire Fire Insurance Company..... | 86853 |
| London Guarantee & Accident Company..... | 86854 |
| North British & Mercantile Insurance Co. | 86857 |
| Michigan Fire & Marine Insurance Company..... | 86860 |
| United States Lloyds Marine Ins. Company..... | 86862 |
| Virginia State Insurance Company..... | 86869 |
| Firemen's Fund Insurance Corporation..... | 86879 |
| Firemen's Insurance Company of Newark..... | 86880 |
| Commercial Union Fire Insurance Co. of N. Y. | 86899 |
| Dixie Fire Insurance Company..... | 86905 |
| Southern National Insurance Company..... | 86920 |
| Svea Insurance Company | 86922 |
| United Firemen's Insurance Company..... | 86923 |
| General Marine Insurance Company..... | 86956 |
| Metropolitan Casualty Company..... | 86957 |
| Ohio German Fire Insurance Company..... | 86959 |
| Empire City Fire Insurance Company..... | 87191 |
| New Amsterdam Casualty Company..... | 87193 |
| Agricultural Insurance Company of N. Y..... | 87405 |
| Sea Insurance Company..... | 86915 |

On motion of Hall and Monroe of counsel for the several plaintiffs hereinabove named.

It is ordered that all of these causes being in the same division and involving the same legal questions be, for convenience of trial and saving of expense, consolidated and hereafter known under the title of Orient Insurance Company, et al. vs. Board of Assessors, et al. No. 86033, Civil District Court, Division "D."

Reserving all legal rights I consent to the motion.

(Sg.)

H. G. DUPRE,

Ass't City Att'y.

H. P. SNEED,

GEO. H. TERRIBERRY,

Att'y B'd Assessors.

10

Division "C," Civil District Court.

No. 86833.

ORIENT FIRE INSURANCE COMPANY

vs.

BOARD OF ASSESSORS et als.

Consolidated Cases.

Testimony and Notes of Evidence Taken in Open Court on Wednesday, December 9th, 1908, Before the Hon. John St. Paul, Judge on the Trial, by A. E. Oliveira, Stenographer.

Appearances:

For Plaintiffs: Messrs. Hall & Monroe.

For the Board of Assessors: Hon. Geo. H. Terriberry.

For the City of New Orleans: Hon. H. G. Dupre, Ass't City Attorney.

For Tax Collector: Messrs. Zachary & Sneed.

Index.

| | |
|--------------------------------|----------|
| Objections, rulings, etc. | Page 2. |
| C. Taylor Gauche | Page 3. |
| J. D. Kitchen..... | Page 18. |
| Earl E. Wright..... | Page 31. |
| Peter F. Pescud..... | Page 40. |
| D. R. Buchanan..... | Page 44. |
| H. M. Eustis..... | Page 45. |
| George S. Kausler..... | Page 46. |
| M. Frishman | Page 48. |
| Agreement | Page 50. |
| C. C. Swayze..... | Page 52. |
| Harry H. Hall..... | Page 55. |
| Adjourned | Page 58. |

11 By Mr. DUPRE:

This case having been regularly set for trial for this day, and coming up on this day, counsel for defendants call the attention of the Court to the fact that an exception of no cause of action was filed, and for grounds of exception avers that plaintiff's petition in this case shows no cause of action; that the exception of no cause of action was filed at the same time as the answer, said answer only being filed in the event said exception was over-ruled; and the said defendants' counsel now request the Court to take up and pass upon said exception previous to entering upon the trial of the merits of the case.

By Mr. HALL:

To which counsel for plaintiffs urge that inasmuch as the exception has not been separately drawn and separately submitted to the Court, but has been placed upon the same document with the answer, and a separate trial has not been asked, that it is and must be regarded as being part of the answer, and cannot be tried as a separate exception independent of the answer.

By the COURT:

The benefit of the exception is reserved to the defendants; but they cannot in view of their filing them all at the same time expect a separate judgment on the exception and on the merits.

By Mr. ZACHARY:

Counsel for the defendants herein reserve this note to the ruling of the Court in place of filing a regular bill of exceptions.

By Mr. TERRIBERRY:

All of these defendants join in the reservation of this bill of exceptions.

12 C. TAYLOR GAUCHE, who being first duly sworn by the Minute Clerk on behalf of plaintiffs, did testify as follows:

Direct examination.

By Mr. HALL:

I place this witness on the stand under the Act No. 126 of 1908, which gives the right to a litigant to examine a witness of the opposing side without making him his own witness.

By Mr. HALL:

Q. Mr. Gauche, you are the assessor of the first district of this city?

By Mr. DUPRE:

Counsel for defendant, the City of New Orleans, objects to any testimony being offered to show a reduction of assessment for the years 1906 and 1907, on the grounds set forth in the exception of no cause of action, heretofore pleaded, to-wit: That said suit was

not lodged with the Court before the first of November, either of the year 1903 or of 1907.

Second. For the further reason that the plaintiff is estopped from contesting the correctness of the amount of the assessments for the years 1903, 1907 and 1908 because of its failure in each of said years to make return of its property, duly sworn to, as required by Act No. 170 of 1898, Section 5, in accordance with the plea of estoppel, heretofore specially tendered.

Third. For the further reason that plaintiff is estopped from contesting the correctness of the amount of the assessments for the years 1906, 1907 and 1908 because of its failure in each of said years to make seasonable application for an abatement or reduction of assessments in accordance with the plea of estoppel, heretofore tendered.

Fourth. For the further reason that plaintiff is estopped from contesting that the amount of the assessments for the years 1907 and 1908 because of its failure in each of said years to apply to the Committee on Budget and Assessments of the City Council, for an abatement in accordance with Section 26 of Act 170 of 1898; and acts amendatory thereof, in accordance with the plea of estoppel heretofore specially tendered.

By the COURT:

The objections go to the effect.

By Mr. DUPRE:

To which ruling of the Court all of the defendants reserve a bill of exceptions.

By Mr. HALL:

Q. Mr. Gauche, you are the assessor of the first district of this City?

A. Yes sir.

Q. And President of the Board of Assessors?

A. Yes sir.

Q. As such you are reasonably familiar with the jurisprudence of the Supreme Court of Louisiana in regard to assessment matters?

A. I am well posted in regard to assessment matters, yes sir.

Q. You were aware of the fact, in 1902 and 1904, and again in 1905, that the Supreme Court decided that premiums due to foreign insurance companies by Louisiana policy-holders were not liable to taxation in this State; you are aware of that?

14 By Mr. TERRIBERRY: Objected to on the ground that it is immaterial whether the assessor was aware of that or not. If the Supreme Court decided that, it is a law, and it is immaterial whether this assessor knew it or not.

By the COURT: The objection goes to the effect.

By Mr. TERRIBERRY: Defendants reserve a bill of exceptions.

A. No sir, I was not aware of it.

By Mr. HALL:

Q. Why did the Board of Assessors then never levy an assessment on these outstanding premiums during those years during the years 1900 to 1906?

A. 1900 to 1906?

Q. Yes sir?

A. Well, a great many of these insurance companies I would call them foreign insurance companies, other than those in the Parish of Orleans, were assessed for some small amount, amounting to \$1500—\$2,000 and \$3,000 of business—In 1903 we became aware of the fact that they were doing such a large business in Louisiana, amounting to thirty and forty and fifty thousand dollars, according to their returns, while they were really doing a business of two hundred and three hundred thousand dollars, and some even more; and we concluded that they were not paying their just share of taxation.

Q. Did I understand you to say that any of these non-resident insurance companies made returns to you between 1899 and 1907?

A. We assessed the agents of those companies and not the insurance companies directly. For instance, Mr. Pescud represented ten companies, and we assessed him as an insurance agent for those years.

15 Q. Then, you were mistaken when you said that some of these non-resident insurance companies made returns for taxation?

A. The Liverpool & London & Globe of England, I believe, was one of them; and then, afterwards, the London & Liverpool of New York.

Q. Can you produce those returns?

A. I think I can; for what years?

Q. Any year between 1899 and 1906?

A. I think the Liverpool & London of England; I don't know whether the Liverpool & London of New York was then in business here, but I'll try and get them:—

Q. Don't you know that the Supreme Court in 1902 and in 1899 specifically decided that the Liverpool & London were not liable for taxation or assessment on their uncollected premiums?

A. I don't know about the Liverpool & London; but Mr. Low as a rule always made returns.

Q. Did he ever make a return of uncollected premiums in the State of Louisiana?

A. What he made was cash; I am not positive; I would like to see the returns.

Q. If you can find a return either by the Liverpool & London or by any other non resident insurance company of its uncollected premiums for assessment between 1889 and 1907, will you produce it?

A. I will.

Q. And if you can't find it, then it might be assumed that it does not exist?

A. I can telephone now for it.

Q. If it is there you can find it?

A. Yes sir.

Q. If it is not there it is because it has never been filed?

16 A. I will try to get it from 1889 to 1907.

Q. All I want is a return of any foreign or non resident insurance company of its premiums due on open account for those years, just about the premiums?

A. I hardly think they made any returns on that; I think it was mostly cash; I'll get those years; you don't want 1907?

Q. No sir, because they all made returns then under compulsion.

A. Well, 1906, you do want, and I'll try and get it.

Q. When you made these assessments in 1903, it was the first time you had levied any assessments upon these premiums, as stated, was it not.

A. To the best of my belief and knowledge, yes sir.

Q. How did you reach the amounts of these assessments?

A. From the sworn affidavit, made either to the Secretary of State, or the Tax Collector of the First District; we got their affidavits from the tax collector of the first district, and we assessed fifty per cent of that business, and we took fifty per cent of that assessment, and assessed them one twelfth cash and the other eleven-twelfths premium in the course of collection; money at interest and bills receivable and any other assessable paper they might have; for explanation: an insurance company doing business in the State of Louisiana made a sworn affidavit to the Secretary of State or the tax collector doing business of \$500,000.00—and fifty per cent of that would make \$250,000.00, and we took that \$250,000.00 and assessed one twelfth as cash in bank or in possession or on hand; the other eleven twelfths we would assess as money at interest or credit, bills receivable, premiums in course of collection.

Q. In other words your assessment of money loaned on interest I use the technical expression—all credits and bills receivable or for goods sold, was fifty per cent of the gross premium of each company for the entire year, less one twelfth, which you assessed to the item of cash or money in possession?

A. That was simply, if you want the fact, just about guess work, it was the best we could do under the circumstances.

By the COURT:

Q. I understand that you took the amount of premiums which an insurance company would collect during the year, of all its outstanding policies, divide that into one half, and make an assessment on the basis of one half of the premiums that the insurance company would collect in a year?

A. Yes, that is correct.

By Mr. HALL:

Q. Then you or the Board of Assessors took these items from the annual report of the insurance department of the State of Louisiana,

for the years 1905, 1906 and 1907, which contained the sworn statements of these insurance companies, showing the entire premiums collected for all business done in the State of Louisiana during those years?

A. Yes sir; 1905 we assessed for 1906 and so on.

Q. And as you say, it was guess work?

A. Yes sir, I have to acknowledge that.

Q. You had, in other words, no information of any kind before you, as to what the actual outstanding premiums were?

A. No sir, none other than their own sworn statements.

Q. For the entire business?

A. Yes sir.

18 Q. And then you assumed at the end of the year there was uncollected fifty per cent of all of those premiums in making this assessment?

A. We simply guessed at it; we had no positive knowledge.

Q. That is, you had no positive knowledge, in January 1906; but in January 1907, did not those companies make return, under oath, for the amounts actually due for outstanding premiums?

A. Yes; but the returns were so small that the Board refused to receive them.

Q. Some of them, companies doing business of \$500,000, some of them may have made returns that they were not assessable at all, but if assessable at all they would ask to be assessed at a certain amount; that is the returns that were made; they all made returns not to be assessed. Would you say five or six thousand dollars?

A. I would say a company assessed for \$250,000.00 would make return to be assessed from 12 to 20 thousand dollars and we rejected it.

Q. Is it not a fact that in those applications there were sworn affidavits by each of those insurance companies to the effect that the figures given by them were the actual amounts of out-standing premiums?

A. Yes sir.

Q. Why didn't you take their sworn statements?

A. Because the discrepancy was so large, a company doing business of \$250,000.00 would make returns for so much less.

Q. Don't you know as a matter of fact that insurance premiums are usually collectable in thirty days and sometimes sixty days?

A. Yes, I know it is a rule, certainly.

19 Q. And that therefore at the end of twelve months, presumably, there would only be outstanding, uncollected premiums of either one twelfth or one sixth of the entire amount of business done?

A. Yes; I believe so.

Q. And yet you gentlemen of the Board of Assessors declined to consider those sworn affidavits and made the assessment for 1907 the same as 1906?

A. We took into consideration that these companies had monies at interest; we know that they have money at interest and may have mortgage notes that might run a year or two years.

Q. In their affidavits they stated they had nothing else?

A. I don't remember their affidavits.

Q. And you gentlemen pursued that same course for 1908?

A. Yes sir, the same course.

Q. Is it not a fact Mr. Gauche that the Board of Assessors was simply trying to do their duty without doing any injustice to these companies, and they desired to have a fair assessment representing the truth?

A. We certainly do.

Q. You didn't wish to assess them for any sum larger than you thought was proper?

A. No sir.

Q. Is it not a fact Mr. Gauche that you gentlemen of the Board of Assessors knew that there was pending before the Supreme Court a test case to test the validity of these assessments?

A. We knew they were pending, yes.

Q. Is it not a fact that you reached the conclusion that it was useless to go into an elaborate detail of examination and examine each return when the Supreme Court might declare the entire assessment invalid?

20 A. It was simply to facilitate the agents of these companies and to have one attorney make their returns.

Q. You remember that I called at your office in this connection, don't you?

A. Yes; I remember you coming there.

Q. Do you remember going with me before the council committee on revision of assessments?

A. I may have.

Q. Do you remember your stating to me that both the Board of Assessors and the Committee did not care to take the trouble or time to examine into these individual applications because the validity and legality of the tax was pending before the Supreme Court and it would be simply useless labor, and that if the Supreme Court decided that the tax should be collected then you were disposed to make such assessments or allowances as was just and proper?

A. You misunderstood me. I said in order to facilitate those parties coming before the Board of Assessors, I did not say we didn't have time; but to facilitate them in making returns; that was in 1907; I believe that their agent or yourself or Mr. Wright had made returns for quite a number of the insurance companies, and we did have a case pending in Court and we were going to assess them the same in 1907 as for 1906; but not that we were not going to accept the returns if they came in.

Q. In other words you were not going into the question until the validity were determined by the Courts?

A. We had some of those companies up before us in 1907; we heard them—what they had to say; I did make an assessment, and I presume we were going to assess in the same manner in 1907 and in 1906.

21 Q. Without affidavits?

A. We examined every affidavit and statement that was

made and if we found the return that they made anywhere near to what our assessment was, we would have accepted their returns; but they made returns that were not assessable at all.

Q. You recall going with me before the Committee while it was in session, and I asking the Chairman of that Committee if he desired to hear these applications, and his telling me in your presence that they did not care to take the question up and discuss it, since the validity of the tax was pending before the Supreme Court?

A. I don't remember; you might have gone there with me, but the Chairman of that Budget Committee and some other gentlemen knew that these foreign insurance companies assessments were involved in a suit in Court, and unless the assessor of the district would recommend a reduction they would make no reduction at all.

Q. And they would not have any examination nor hear any witnesses?

A. I don't know whether they would or not; I never heard them say they would not; there were no witnesses to hear; some came up and they rejected them.

Q. Don't you remember my going there and speaking to you about it and you telling me that the Committee was in session, and my suggesting that we go in and the Chairman received us very courteously and said to me in your presence that what you said was perfectly correct,—that it was useless to go into an elaborate examination of these one hundred or two hundred applications, pending a determination by the Supreme Court of the validity of the tax; that if the tax should be held to be invalid that it would be time
22 thrown away, and if valid that they desired to collect such taxes as were actually due; do you remember that?

A. It amounts to the same thing, but not the same words.

Q. I mean in substance?

A. Yes sir; but that I would hear you if you insisted upon being heard or these companies, as it was our duty to do so.

Q. You stated that Mr. Wright, representing all of these companies made application on their behalf, and that was permitted by the Board and by the Committee,—in other words they extended every facility to these insurance companies?

A. That was made to the Board; he represented a certain number of insurance companies; but what he did before the Revision Committee of the City Council I don't know and I haven't any idea.

Cross-examination.

By Mr. DUPRE:

Q. How long have you been a member of the Board of Assessors?

A. Since 1898, when I made my first assessment, I think it was 1897 or 1898.

Q. Since what date have you been President of the Board of Assessors?

A. I think about four years ago; after Mr. Behrman was elected State Auditor. He was President of the Board and he vacated the place, and then I became President; about four years ago.

Q. Has the Board of Assessors a legal adviser?

A. Yes sir.

Q. Are they guided in any way in making up their assessments in matters of law?

A. Yes sir.

23 Q. Previous to the provision by the General Assembly for Special Counsel, who was the legal adviser of the Board of Assessors?

A. The City Attorney.

Q. Now, the present suit, Mr. Gauche, involves the assessments for the years 1906, 1907 and 1908, of a number of non-resident insurance companies about twenty four of them in this Division of the Court to-day; those assessments are divided into two parts, cash and money at interest, and etc., for those three years?

A. Yes sir.

Q. Now, I ask you whether it has been the practice of the Board of Assessors, since your connection with it, to make assessments for cash against non-resident concerns doing business in this City?

A. We have, but only on the agent before 1906.

Q. I am not talking about insurance companies alone; I am talking about non-resident corporations doing business in the City of New Orleans. Has it or not been the practice of your Board, previous to 1906, to make assessments on cash?

A. Yes; we have; on all corporations; if you can designate some of them; I just can't remember them.

Q. Now, when did you state for the first time that premiums in the course of collection were considered by the Board in making assessments?

A. We have always done it.

Q. You did it previous to 1906?

A. Oh, yes; you have reference to foreign corporations?

A. Yes sir.

A. Yes sir, we have some down there.

24 Q. When did you make the first general assessment against insurance companies, taking as the basis the method which you state that you took?

A. It was in the year 1906.

Q. During that year did any of these non-resident insurance companies make a return to your office?

By Mr. HALL: It is admitted that none of these companies made return of outstanding premiums in January, 1906.

By Mr. DUPRE:

Q. Will you please state whether any of these companies made application for a reduction from the amounts at which they were assessed?

By Mr. HALL: It is likewise admitted that they made no such application because they were not aware of any such assessments.

By Mr. DUPRE:

Q. When did this conversation regarding which you have been examined by Mr. Hall take place between you and him?

A. I cannot state whether it was 1906 or 1907; I cannot state that; it may have been 1907, but I am not positive of that.

Q. Mr. Hall asks me to ask you, and I now ask the question, whether you did not see him both in the years 1907 and 1908?

A. I guess I did, in 1907-1908, when these assessments came up.

Q. When did you pay this visit to the Revision Committee of the City Council, regarding which it is sought to refresh your memory?

A. I have no idea whether I paid any such visit or not because they called me in whenever there is any assessment up for abatement. They call in the assessors of the district, and when I am in there I stay until the First District is all over. It may have been that I went in there with Mr. Hall and these applications were up, and the Chairman of the Committee will say: Have you anything to suggest? And I said: No, I have no reductions to make;

25 these cases are in Court.

Q. Who is Chairman of that Committee?

A. Mr. Frawley.

Q. Did you ever state to these non-resident insurance companies, either to their agent Mr. Wright, or Mr. Hall, or any one else, that there was no use of their making returns or taking the steps necessary to reserve their right to go into Court?

A. No, sir; I never had any such authority; Mr. Wright misunderstood me if he says so.

Q. Neither in 1907 or 1908?

A. No, sir; I have no such authority.

Q. Did your Board ever refuse to hear these gentlemen when they asked to be heard?

A. No, sir; never.

By Mr. ZACHARY:

Q. Mr. Gauche, do you remember if in 1906 some of these non-resident insurance companies made returns and they were disregarded by the assessors and subsequently were tested in Court on an application to reduce, and the Court sustained the assessment? For instance, the Traveler's?

A. In the case of the Travelers' or the Metropolitan Life?

Q. You know there were several?

A. Yes sir.

Q. Was not one of your reasons in 1907 and 1908 for disregarding these returns that the Courts in the previous year had not sustained the returns was made by these insurance companies?

A. I am not positive; I don't remember.

By Mr. SNEED:

Q. Have you any recollection about the particular case of the Travelers' Insurance Company against the Board?

A. No, I have no positive recollection of it.

Q. Do you remember the nature of their return?

26 A. It was an accident insurance company, I think.

Q. Accident, Health, Life and everything?

A. I believe so; I don't remember the case.

Q. In 1906, did you not discover that these returns made by these

various companies were so utterly unreliable that it would have been dangerous for you to have followed them?

By Mr. HALL: Objected to; I put the witness on the stand under the Act of 1908.

By the COURT: The objection goes to the effect.

A. They did not make any returns in 1906; it was the agents of these foreign insurance companies that made those returns; we considered that they were not paying their just taxation.

Q. Did not some of these foreign insurance companies make specific returns of no property?

A. Back in 1903 some of these companies made no returns at all; for instance, Mr. Pescud and Warner & Black and quite a number of insurance agents, we used to assess individually as insurance agents; they represented these companies, but now instead of assessing the agents we assess all the companies. I want to say that some of these companies in 1907 came up and paid their assessment; the Union Life I believe was one of them; I believe several foreign life insurance companies came up and paid their taxes in 1907 because there was a small discrepancy amounting to three, four, five or six thousand dollars, and we accepted the returns and they paid their taxes upon them.

By Mr. DUPRE: It is agreed and understood that the objections heretofore urged by counsel for defendants to the testimony of Mr. Gauche shall be understood as having been urged to each and every one of the interrogatories propounded to him, and the answers made by him, without the necessity of any special objections or the reservation of any special bill of exceptions, and to all testimony to be hereafter offered along similar lines.

27

Virginia State Insurance Company.

J. D. KITCHEN, who being first duly sworn by the Court did testify as follows:

Direct examination.

By Mr. HALL:

Q. Mr. Kitchen, you are the agent in this State of the Virginia State Insurance Company?

A. The General Agent, sir.

Q. Can you state from memory or from investigation what were the premiums due under open account by Louisiana policy holders of that company on the first of January, 1906?

A. I can refer to my records.

Q. You can do it; just state what they were?

A. \$4,013.81—

Q. January 1st, 1907?

A. \$3,936.00—

Q. 1st of January, 1908?

A. \$5,347.00—

Q. Those were all the premiums uncollected and due under open account of that Company in this State?

A. Yes sir.

Q. Did you make any return for that Company on the 1st of January, 1907 and the 1st of January, 1908?

A. I did.

Q. Did you make any application to reduce the assessment after it was made?

A. I did.

Q. Was an application made to the Committee on Revision
28 of Assessments?

A. Well, my application was made in the Board of Assessors room; I don't know what Committee it was. A gentleman was pointed out to me as the proper man to give it to.

Q. And you made affidavit to that return?

A. I did.

Q. Was your Company ever assessed, either on those premiums or upon cash on hand, prior to the 1st of January, 1903?

A. No sir.

Q. Did you ever hear of any such taxation or such assessment?

A. No sir, not against the Company; I never heard of it.

Q. What cash or money in possession had your company in this State on the 1st of January, 1906, 1907 and 1908?

A. None to my knowledge.

Q. What money had they in connection with the business which you represented for them? Did they have any cash?

A. No sir, nothing except what I owed them, the balances.

Q. In other words you mean to say by that they had uncollected premiums?

A. Yes sir.

Q. But no cash?

A. No sir.

Q. Does the character of the business of any of these non resident insurance companies require the use of cash? Do they have a bank deposit here?

A. Not as far as I know; my companies do not.

Q. The policies are issued and the premiums collected by you and remitted to the company?

A. Yes sir.

Q. Does that involve any expenditures of monies?

A. No sir.

Q. You are charged with the costs of the collections?

29 A. Yes, I pay all of the charges.

A. They have no bank account and use no money?

A. No sir, no bank account.

Q. You stated that they had nothing here in those years?

A. No sir, nothing at all.

Cross-examination by Mr. ZACHARY:

Q. You stated that you made an application; did you make more than one application for a reduction?

A. Only one each year, if that is what you mean.

Q. To whom did you make the application?

A. I don't know the name of the gentleman.

Q. Was it to a member of the Board of Assessors?

A. Yes sir, in the City Hall.

Q. It was refused in each instance?

A. Yes, it was.

Q. Did you make any application to the Board of Revision of the City Council?

A. I did not personally, no sir.

Q. Did anybody make it on behalf of your company?

A. No sir, they did not.

Q. These figures which you have given were for what?

A. Uncollected premiums.

Q. Uncollected premiums where?

A. In the State of Louisiana.

Q. That does not include uncollected premiums on policies issued here to other States?

A. No sir, on Louisiana business only.

Q. You, as the agent of the company, issue policies to people living in Mississippi, Alabama and Arkansas?

A. No sir; the law of Louisiana would not allow me to issue policies in the State of Mississippi.

Q. To a person residing in Mississippi?

A. On property in the State of Mississippi?

30 Q. I am not talking about property?

A. My company is a fire insurance company.

Q. Then, I am to understand that you made but one application for a reduction, and that was to the Board of Assessors for each year?

A. Yes sir, for each year of these two years.

By Mr. HALL: He means personally——

A. Yes sir, personally; that is all I am testifying to.

By Mr. DUPRE:

Q. What figures did you return to the Board of Assessors for the year 1907 in behalf of your insurance company?

A. I read them to you just now.

Q. I am now referring to the assessments for 1907.

A. That was returned first of January, 1908.

Q. I refer to the assessments of previous years; did you make returns for those years?

A. Yes sir, for the year 1907; on the first of January, 1908.

Q. What figures did you give for the year 1907?

A. You mean the amount?

Q. Yes sir.

A. I'll have to refer to my memoranda.

Q. The figures that were taken as a basis for the year of 1907?

A. Do you mean the assessment made the first of January, 1907, or the first of January, 1908.

Q. If I say 1907 I don't mean 1908?

A. For the year 1907 our uncollected premiums were \$5,347.00.

Q. Did you make your return to that effect?

A. I did.

Q. Of January, 1907?

A. Yes sir.

Q. Did you follow up that return with an application for a reduction of the assessment made?

31 A. Yes sir.

Q. Did you make a similar application for reduction when the Board of Assessors had refused to make your reduction to the Board of Revision?

A. I only made one application for each year.

Q. You did not follow up your application for a reduction in 1907 or 1908, by an application for a reduction to the Board of Revision?

A. I did not.

Q. Did anybody representing your company do so?

A. I cannot say positively, but I think there was by Mr. Wright?

Q. Did you in either of the returns for the years made by you report any money in possession in your hands as belonging to this company which you represent?

A. No sir, I did not.

Q. Kindly state the method of doing business with regard to the disposition of such cash payments as are made to you as agent of the Virginia State Insurance Company?

A. We are general agents, and our subagents issue the policies in Louisiana.

Q. How do you operate, through special agents?

A. Through local agents.

Q. Do they make remittances to you?

A. They do.

Q. Where are those remittances kept?

A. We keep them.

Q. Do you keep them in a box or a vault or in bank?

A. Oh, in Bank.

Q. In what Bank during 1907 and 1908?

A. The Hibernia Bank.

Q. What is the name of that account?

A. The account of J. D. Kitchen & Brother at present.

Q. Do you represent other insurance companies besides
32 this one?

A. I do.

Q. And the method of doing business is the same in each one?

A. Yes sir, the same.

Q. The money that is turned in to you by your special agents?

A. No sir, local agents.

Q. Is the result of premiums collected,—are they made monthly or weekly or when?

A. Sometimes monthly and sometimes in sixty days; we give agents sixty days' time.

Q. And you regard that money as your personal property and deposit it in Bank to your own account?

A. Yes sir.

Q. Although it represents the premiums arising from companies that you represent?

A. It represents more than premiums; I suppose we get something out of it.

Q. It results from the business done?

A. Yes sir.

Q. Then how do you settle with your company?

A. Monthly.

Q. In what manner, check?

A. Yes sir, check and exchange.

Q. The premiums then which are earned in the State of Louisiana by the Virginia State Insurance Company are not the property of the Virginia State Insurance Company but the property of J. D. Kitchen and brother?

A. I don't know that you would call them premiums; the Virginia State Insurance Company has no account.

Q. Are you authorized to do business in the State of Louisiana, or is it the Virginia State Insurance Company?

A. Yes, the Virginia State, and we are also.

Q. The Company is, however, itself authorized independently of you?

A. Yes sir, it certainly is.

Q. And the premiums which are collected here by your agents and thereafter by yourself are not subject in any manner to check by the home company?

A. No sir, not at all.

Q. There was never any account in either of those years in City of New Orleans in the name of the Virginia State Insurance Company?

A. There was not, no sir.

Q. Mr. Kitchen, the amount which you returned represented uncollected premiums due the Virginia State Insurance Company in the State of Louisiana?

A. Yes sir, premiums due at the end of the year.

Q. The premiums due the company, when uncollected, is the Company's but the cash in Bank is yours?

A. Yes sir.

Q. Do you mean to tell the Court that that money in Bank is the property of J. D. Kitchen and brother, and not the property of the Virginia State Insurance Company?

A. Yes sir, I do.

Q. I believe you have stated, but I have forgotten it,—how do you finally settle with the company?

A. We remit them monthly.

Q. Then what was the average deposit that Kitchen and brother had on hand at the end of 1907?

A. I cannot tell you that.

By Mr. TERRIBERRY:

Q. As to these credits, you render bills to the policy holders?

A. No, our local agents attend to that; I don't know how they make their collections.

34 Q. Do you know whether they collect the premiums themselves and give receipts to the policy holders for the premiums?

A. They must collect them, they pay me.

Q. Do you know what kind of a receipt they give?

A. No sir, I do not.

Q. Do you receipt to your local agent?

A. Yes sir.

Q. What do the receipts state?

A. Mr. John Smith; we have received your check for ten dollars.

Q. How is it signed?

A. J. D. Kitchen and brother.

Q. So when your local agent has that receipt it would not show that it was a receipt for the Virginia State or some other insurance company?

A. We only represent one company.

Q. So, it is understood when he has a receipt for a premium it specifies the number of the policy?

A. No sir.

Q. And the money so collected by the local agent and delivered to you is money that represents a premium due, and they owe the money to the Virginia State Insurance Company?

A. No sir, we owe the money, and sometimes we lost it.

Q. Are you under bond to that company?

A. Yes sir.

Q. In a sufficient amount to protect the company on all those outstanding premiums?

A. Well, it might and might not; sometimes our monthly premiums are greater than others.

Q. When you remit to the home office what do you tell them?

A. We write a letter: "Enclosed, find exchange balance such and such month's account."

Q. Account between you and the home office and not between the home office and the policy holders?

A. No sir.

35 Q. Has the home office any record of the premiums due?

A. Why, certainly; we could not balance our account with them unless they had a record.

Q. How are they informed that certain premiums are due?

A. They have our monthly accounts.

Q. They have a record of the policies and also a record of the outstanding premiums?

A. Yes, as we sent them.

Q. Every thirty days they look to you to account for these premiums?

A. Yes sir.

Q. Whether or not you collect the premiums when due, do you invariably remit to the Company?

A. Yes, I do.

Q. For the full amount of the month's balances?

A. Yes sir, for the full amount of the month's balances.

Q. Now, as I understand, from 1907 to 1908, you made return or you filed some document with the Board of Assessors, informing the Board what, in your opinion, should be the assessment on open account each year?

A. Yes sir.

Q. How did you arrive at the amount for the year 1907?

A. By going through our books and taking the amount that was due the Company.

Q. What was the amount?

A. Five thousand, three hundred and forty seven dollars.

Q. That is the amount due the Company?

A. Yes sir.

Q. By you?

A. Yes sir.

Q. So, you have not figured in the amount due as agent of the Company, through the local agent on policy holders?

A. They could not both be due.

36 Q. In figuring out the amounts figuring the basis of the return made by you to the Board of Assessors, you have never taken into consideration the premiums due your agency, as you understand it to be by the policy holder through the local agent?

A. Those are bound to be included in the amount of this reason: sixty days is the length of time that we allow credit to the agents, but we have a little longer time than that from the Company.

Q. How much time, Mr. Kitchen, have you with the Company?

A. We have, well say, from seventy five to eighty days.

Q. Well, now, how often do you make these reports?

A. Monthly, to the Company.

Q. Then why do you, if this money is not due to the Company by the policy holder, include it in your report to the Company?

A. Because we owe it to the Company.

Q. When you make your report to the Board of Assessors, do you show that you owe so much to the Virginia State, and you don't specifically state what the policy holder owes you?

A. They are both due on that account by separate amounts, because what the policy holder owes us is bound to be of a later day; they go over that length of time that the company gives us.

By the Court:

Q. Does the Company charge you with the premium as soon as the policy is issued?

A. No sir, the company don't know until we get the report from the agent, and we send that report to the Company.

Q. When you send him in a memorandum that the policy has been issued, do you charge the premium up at once?

A. At the end of the month we render a monthly account, and that includes the month's business.

Q. They get no memorandum of the policy?

23

A. Yes, they get a memorandum of the policy; we send that once a week.

37 Q. Are you then charged up with the full amount of that premium by the Company?

A. Yes, they charge us up. At the end of the month we send a report and I imagine they charge our account with the total.

Q. What I mean to say is, they don't care whether you collect it or don't collect it?

A. Oh no sir, they don't; if we lost the premium that is our fault; we are responsible to the Company.

By Mr. TERRIBERRY:

Q. Is it not probable, as a matter of fact, that the credit that would appear to be due on the books of the home office, would be much larger than the credit that would appear on your books to be due the home office?

A. I cannot say exactly; I would have to look at the book; I cannot tell generally; it has always been our habit, at the end of the year, in December, to advance the Company the balance by remitting one month, thirty days' earlier than usual; in other words at the end of this year, on the 31st of December, by that time we will have remitted that company everything with the exception of November and December.

Q. In giving your testimony, these credits and this cash, all grows out of business done in Louisiana?

A. Yes sir.

Q. These credits and cash have grown out of business done in this State?

A. Yes sir, these figures are Louisiana figures.

By Mr. HALL:

Q. While the company charged you with the premium upon the policies issued, supposing that policy be cancelled at the end of thirty or sixty days, what is done then?

A. We send it back to the Company and get the return premium.

38 Q. I understood you to say that at the end of the year there are only outstanding about one sixth of all of the premiums due the Company?

A. Yes, about two months; it might average one sixth or be a little more or less.

Q. When you made the return to the Assessors' office of the amount of premiums due by you to the Company, that covered as I understand it seventy five or eighty days of collections?

A. Yes, about that time.

Q. Therefore, that return was larger than if premiums due by the policy holders were returned and only covered sixty days?

A. Yes sir.

Q. I omitted in your testimony, in regard to returns, asking you if monies on deposit applied to the cash or money in possession, as well as to money loaned at interest?

A. It applies to the entire assessment.

ADMISSION.—It is admitted that all of the assessments, as set forth in the several petitions herein, are the assessments as made for the years named.

EARL E. WRIGHT, who being first duly sworn by the Minute Clerk, testified as follows:

Direct examination by Mr. HALL:

Q. What is your business?

A. Insurance business.

Q. What connection have you had with these non resident insurance companies in regard to these assessments, and when did that connection begin?

A. That connection began in 1906.

Q. What was the occasion of that?

39 A. Well, the companies found that they had been assessed, and they did not know just exactly what that assessment was for and they did not know what that assessment was on; there was a meeting of the special agents of the companies called, and the general agents who were in this City attended, and there was a committee appointed to take the matter in hand, of which Mr. Clarence Low was Chairman, and myself Secretary.

Q. Well, now, what did you do in that connection, if anything?

A. How do you mean?

Q. Did you make any examination of the assessment rolls for any years, or did you request the agents to make examinations of those rolls for any given years?

A. No sir; that was the first notice we had of any assessment, and we took the matter up with you, who we agreed upon as attorney in the matter, and then we found it was too late to protest for the year 1906, because the time for filing protests on those matters had gone by.

Q. What did you do then, later?

A. For the next year I filed the protests.

Q. What do you mean by protests?

A. I mean that I advised.

Q. Did you give the companies or the agents of the companies any advice concerning returns to be made under oath by them as to the amount of premiums actually due?

A. I did.

Q. What was done?

A. So far as I know, they all made a return under protest.

Q. Will you please examine the return made by the Sea Insurance Company, of Liverpool, which I take as a sample, and state whether or not that is a sample of the returns made by the companies under your instructions?

40 A. Yes; this seems to be; I don't know exactly about the exact verbiage.

Q. As nearly as you recollect it?

A. Yes sir.

Q. This statement made by the Sea Insurance Company shows

uncollected premiums in the Parish of Orleans, State of Louisiana, on January 1st, 1908, amounted to \$1407.16. We make this return of uncollected premiums, due January 1st, 1908, on open accounts, under protest, and denying that any legal assessment therefor can be made or any taxes legally collected, this return being made solely for the purpose of limiting the amount of taxes sought to be imposed, and the Court maintained its legality. This tender, so far as you know was the sworn return made by all of these defendant insurance companies in that same form?

A. Yes sir, that way.

Q. For the years 1907 and 1908?

A. Yes sir, 1907 and 1908?

Q. When you found that the Board of Assessors disregarded these applications, what did you do, if anything, on behalf of these companies whom you represented?

A. I filed a petition addressed to the Board of Assessors for the companies that our committee represented, asking that the returns made by the companies under protest be accepted.

Q. In lieu of the assessments made?

A. Yes sir, in lieu of the assessments made by the assessors.

Q. Did you swear to that application?

A. Yes, I did, as attorney in fact for the companies represented by our committee.

Q. In the petition for each of those companies, did you make this statement: That in spite of their returns, duly sworn to they have been assessed upon the current rolls for 1907 on open account and cash, in the several amounts set opposite to their respective
41 names, they deny that they have or had at any time any of the cash amounts set opposite to their names. They further aver that the assessments upon credits or upon uncollected premiums, due under open account, are absolutely illegal, but aver that their returns made under protest, and denying all liability and attested by oath are the true and correct amounts actually due them; wherefore they pray that all of these assessments be cancelled or that the Court determine the right of the City and State to levy an assessment, the same to be reduced to the amount of their returns, for the Parish of Orleans. You say that was filed by you with the Board of Assessors and sworn to by you?

A. Yes sir. For the year 1907, and I took it to the Board of Assessors' office in person.

Q. For the year 1908, what did you do?

A. I mailed the same application to the Board of Assessors and to the Board on Revision of Assessments.

Q. Sworn to in the same way?

A. Yes sir.

Q. The Board of Assessors for both years declined to make these reductions or failed to make them?

A. Well, I presume so; there was no return made to me about it.

Q. Did you thereupon take any action in connection with the Committee of the City Council on Revision of Assessments?

A. As previously stated I filed the same petition with them as I did with the Board of Assessors.

Q. Both for 1907 and 1908?

A. Yes sir.

Q. Made by you under oath as agent of all these companies?

A. I was the attorney in fact; I was not an agent for them.

Q. I see annexed to one of these petitions what purports to be a copy of a letter addressed to the Board of Assessors by Hall & Monroe, for 1907; do you know anything about it?

A. No sir, it didn't come through my office.

By Mr. HALL: Counsel states that on the 28th of March, 1907, his firm addressed to the Board of Assessors, for the Parish of Orleans, the following letter on behalf of the foreign insurance companies:

"We beg to state that due sworn returns, under protest were made by each of those companies, upon an unwarranted assessment, levied against them, on money loaned on interest, on credits and all bills receivable, for money loaned or advanced for goods sold; that the said returns were made under oath, and they protest against the right of the State and City to collect taxes or assessments levied on the sum stated to be the true amount of the outstanding premiums due on open account; in spite of this return your Honorable Board has permitted the originally arbitrary assessments to stand, and we now ask on behalf of the said companies that the said assessments be altogether cancelled, or while protesting against the illegality of the tax we ask that conditioned upon the ultimate judicial determination of the legality of the same it be reduced to the amounts as made under the sworn returns."

This is signed "Hall & Monroe," attorneys for fire insurance companies" and sworn to by "Harry H. Hall, to the best of his knowledge and belief."

This letter, just dictated was produced by the Board of Assessors and handed to counsel by Mr. Terriberry.

By Mr. HALL:

Q. Mr. Wright, how long have you been engaged in the insurance business?

43 A. I have been a special agent in this State for seven years.

Q. Are you familiar with the method of doing business by the non-resident insurance companies through local agents in this City?

A. Yes sir.

Q. Are you familiar practically with the method of doing business by all these non-resident insurance companies in a general way?

A. Yes sir, having represented locally, at different times probably seventy five of the companies that are doing business in this State, and having been connected with the general agency, representing about fifteen companies, which general agency I am now connected with no longer as general agent but as special agent, I can say that I am familiar with the general conduct of the business.

Q. Does the general conduct of that business, as carried on in

this City, necessitate deposits with any of the agents, local, or general or special, in this City, of any sums of money by the agents?

A. On the contrary, it does not; they are very strict in having remittances sent to the home company.

Q. How are those agents paid for their services, by a commission or by a salary?

A. They are paid by commission.

Q. Who defrays their office expenses or expenses of solicitors or other expenses?

A. Outside of the postage stamps used for making reports to the home office and making remittances, the expenses are absolutely conducted by the agents.

Q. Then what need is there for any bank deposit or cash
44 in this City to be held here by the foreign companies?

A. None whatever; because the losses that a company might sustain in a State are paid by draft from the home office.

Q. Do you know or have you ever heard of any of these companies having bank deposits in the State or cash on deposit?

A. No sir, I do not.

Q. Please state now how the policies are issued, and how and by whom the premiums are collected, and when collected to whom they are paid?

A. An insurance policy is a document that requires just as much cash consideration as a deed or any other transaction Life Policies require a certain premium, in consideration of which the company indemnifies the holder thereof.

Q. What I want to know is, who issues the policies?

A. The policies are issued by local agents, who are commissioned by the Company and licensed by the Insurance Commissioner.

Q. When a local agent issues a policy, what report of the issuance of that policy does he make to the home office?

A. What we term in insurance parlance "a daily report on the day that the policy is issued."

Q. Giving the amount?

A. Yes sir, the amount named, rate and the amount of premium, and the number of the policy, description of its location, what it covers.

Q. Is he charged by the Company with that premium?

A. Yes sir, he is, because as far as the Company is concerned it is a cash transaction absolutely, and if he gives any time on it it is his own lookout.

Q. And he collects the premium from the policy holder?

A. Yes sir, the Company has nothing to do with it.

Q. And when does he make returns to the Company and how often?

45 A. Well, as I said, a policy is supposed to be a cash transaction; but for the convenience of allowing agents time to make their accounts and return them to the company different companies have different arrangements.

Q. Generally, what is the arrangement?

A. The general arrangement runs from thirty and sixty days, but the companies I represent personally I'll say don't run that

long in New Orleans, with one exception I have remitted within thirty days.

Q. At the end of twelve months of business, what is the general average proportion of outstanding uncollected premiums due by the agents to the Company?

A. Well, I would say that in many cases one month's business and in some cases may be two months; but in the majority of cases it would be one month.

Most of the agents in the City of New Orleans remit to their companies on the 25th of the month, following that upon which the account is rendered.

Q. And then you state that this is the method in which business is generally conducted, and so far as you know is conducted by all of these companies in question?

A. Yes sir.

Cross-examination.

By Mr. TERRIBERRY:

Q. Mr. Wright, how did you get the information that enabled you to make the return and application for a reduction that you made to the Board of Assessors?

A. The application that I made for reduction?

Q. Yes sir.

A. I got that from the Assessors' office.

Q. Well, the figures to which you wanted the reductions made; how did you get those figures?

46 A. For 1908, I didn't have those figures; the different agents made the returns for 1908. In 1907 when Mr. Hall requested me to make that petition I went down to the Assessors' office and I was furnished the returns as made by the companies themselves.

Q. That was in—

A. In 1907 I made those copies; I don't think that I have them in my office now; I think I have, but I didn't use them; I petitioned the Board of Assessors to reduce the amount to these figures although I didn't name them in my petition, as you see.

Q. In your petition for an abatement you refer to the figures according to your returns?

A. Yes, I named the figures at which they assessed the companies, and asked that they be reduced to the amounts returned by the companies.

Q. Who attended to the returns in 1908?

A. I did the same thing for 1908, except I didn't make a copy of the returns made by the companies.

Q. In other words, the Special Agent or General Agent made the returns to the Board of Assessors and then you came along and for all of them made application for abatement to the figures returned by the local agents?

A. I didn't make any figures.

Q. So you made no such return, and in making oath to the truth of your allegations in the application for an abatement you were

making oath simply to the best of your knowledge and belief and with no actual knowledge of the figures?

A. No sir; I could not have actual knowledge for one hundred and eight companies, but I will say for my own companies the figures were furnished by my office, who are general agents.

47 Q. As I understand you just looked at the return of the company, which the agent had made, and then in your application for abatement you asked that they be reduced to the figures returned by the agent?

A. Yes sir.

Q. And on oath you asked that they be reduced to the figures as returned by the agent?

A. Yes sir.

Metropolitan Casualty.

PETER F. PESCU, who being first duly sworn by the Minute Clerk, testified as follows:

Direct examination by Mr. HALL:

Q. Mr. Pescud, you represented in the City of New Orleans, and do represent the Metropolitan Casualty Company?

A. Yes, I do.

Q. You made affidavit here that on the 31st day of December, 1905, the outstanding premiums due the Company were \$123.35—

On the 31st of December, 1903, \$101.55—

On the 31st of December, 1907, \$104.45—

Were or were not those balances a fair average balance for the outstanding uncollected premiums during each entire year?

A. They were the actual premiums.

Q. Were the monthly balances approximately about that figure?

A. I think so; we gave those figures as being correct; the actual figures.

48 Q. Were they, in so far as you know, materially less, at that time, or at any other time, during the year, or was that a fair average?

A. I think so; I don't think there was any perceptible difference.

Q. You made return to the insurance department of the State of Louisiana of the entire business done by your company during the year 1905, the Metropolitan Casualty Company?

A. Yes sir.

Q. Can you state about the total premiums received by you during any one year?

A. I should say about \$2500.00; I don't think it exceeds that in the State; that is, for this company.

Cross-examination.

By Mr. TERRIBERRY:

Q. You have a general insurance agency here?

A. Yes sir.

Q. When premiums are due the companies that you represent,

you have your local agents or some representative of your agents collect those premiums, do you not?

A. I do a general insurance business myself, as local agent in the City of New Orleans.

Q. For this Metropolitan Casualty Company, are you the general or local agent?

A. I am general agent, but we have a few agents outside of the State.

Q. And you have some local agents here?

49 A. Yes sir, in the City of New Orleans.

Q. When a man takes out a policy in this Company does he pay the premium to the local agent or to you?

A. He pays to whoever issues the policy.

Q. Then, that agent who issues the policy accounts to you?

A. Yes sir.

Q. And you account to the home office?

A. Yes sir.

Q. So all funds that first come to your office ultimately go to the company?

A. Yes sir.

Q. You have a bank account?

A. Yes sir, P. F. Pescud.

Q. Is that P. F. Pescud yourself or P. F. Pescud, insurance agent.

A. I keep the money in the name of Peter F. Pescud.

Q. You have no account in the name of yourself as agent of anybody?

A. No sir, except in one case; that is the case of the American Surety Company; they have an account of their own, and whenever a premium is collected for the American Surety Company that premium is deposited to its account and the company checks against that; I don't.

Q. I remember that case; we recently took testimony in it?

50 A. At the end of the month they remit my expenses and commissions; I do not personally touch that account; I can draw against it.

Q. If a local agent turns into your hands fifty dollars that he collects on a premium due to the Metropolitan Casualty, what do you do with that fifty dollars?

A. I deposit that to my account.

Q. In your account are deposited all of the premiums collected by you for the different companies?

A. Yes sir, except the American surety company.

Q. And all those premiums due to the home office you remit to them?

A. Yes sir.

Q. And the amounts due by your agents to these various companies would just about correspond with the amount that you have in Bank in the aggregate?

A. Yes sir.

Q. The aggregate amount due to your companies would be about the aggregate amount of the account in the name of P. F. Pescud?

A. Yes sir.

Q. You have some additional account, in addition to that of the companies?

A. Yes sir, I have my own bank account.

Q. And this account you regard as what?

A. The general business.

Q. And then you have your own personal account which you use personally?

A. Yes sir.

Orient Fire Insurance Company of Hartford.

By Mr. HALL:

Q. Mr. Pescud, you represent, and have you since 1905, the Orient Fire Insurance Company of Hartford, as agent?

51 A. Yes sir, I have.

Q. You have made an affidavit that the outstanding premiums due under open account of that Company were as follows, and no more:

December 31st, 1905, \$1371.67—

December 31st, 1906, \$ 888.46—

December 31st, 1907, \$1610.10—

A. These figures are correct and can be verified.

Q. You mean those returns?

A. I do.

Q. You made those returns?

A. I did.

Q. Under oath?

A. I did.

Q. And the applications were made for reduction, as has been testified to, for your account by Mr. Wright?

A. Yes sir.

Q. Who else represented the Orient Insurance Company during those years in this State?

A. Marshall J. Smith & Company had two agencies.

Q. You had no Bank deposit for that company?

A. No sir.

Q. Nor did they have any Bank deposit?

A. No sir.

D. R. BUCHANAN, who being first duly sworn by the Court testified as follows:

Direct examination.

By Mr. HALL:

52 Q. You are Treasurer of the Marshall J. Smith Company, Limited?

A. Yes sir.

Q. Did they represent, as agents in the City of New Orleans, the

Orient Fire Insurance Company of Hartford, during the years 1905, 1906 and 1907?

A. They did.

Q. You have made an affidavit that there was due to that company, as outstanding premiums, the following sums, and no more:

| | |
|---------------------------|------------|
| December 31st, 1905 | \$1157.78— |
| December 31st, 1906 | 600.77— |
| December 31st, 1907 | 703.72— |

and that said Insurance Company had no cash or money in Bank in the City of New Orleans during those years; is that affidavit true and correct?

A. Yes sir.

Q. You were Treasurer of the Company?

A. Yes sir.

Q. These sums were in addition to those due to Mr. Pescud's agency?

A. Yes sir, these were independent in our office.

Firemen's Fund Insurance Company.

H. S. EUSTIS, who being first duly sworn by the Court, testified as follows:

Direct examination.

By Mr. HALL:

Q. You are agent of the Firemen's Fund Insurance Company of San Francisco?

A. Yes sir.

53 Q. You have made an affidavit of the following amounts and no more — were due as premiums under open account, on the 1st of January, 1906; \$2007.40; On the 1st of January, 1907, \$2,251.72; On the 1st of January, 1908, \$1,389.83—and that that company had no cash or money in Bank in the City of New Orleans during those years, in so far as that insurance business of yours is concerned or in so far as you know?

A. Yes sir.

Q. Was that affidavit true and correct?

A. Yes sir.

Q. Did you make for that Company due returns for 1907 and 1908?

A. I'm not quite sure.

Q. You did, as a matter of fact, because I have a copy of them here; you authorized Mr. Wright to represent you in the application that he made?

A. Yes, the companies did.

Q. You heard the testimony of Mr. Wright and Mr. Kitchen in regard to the method of doing business?

A. Yes sir.

Q. Does that correspond to your knowledge of doing business?

A. Yes sir.

By Mr. DUPRE:

Q. What is the time of remittances of your firm to the home office?

A. All policies issued in December were remitted on the 25th of January.

Q. And similarly each month?

A. Yes sir, exactly.

U. S. Lloyds Marine Insurance Company.

GEORGE S. KAUSLER, who being first duly sworn by the Court testified as follows:

54 Direct examination.

By Mr. HALL:

Q. You are the agent here of the United States Lloyds Marine Insurance Company?

A. Yes sir.

Q. You made an affidavit, at the following dates, that the amounts named were all that was due under open account to that Company for premiums uncollected: January 1st, 1906, \$1826.00; January 1st, 1907, \$1130.00; January 1st, 1908, \$6213.00—and that that company had no money on deposit or any cash in your hands in connection with this business?

A. Yes sir, correct.

Q. And not otherwise?

A. Exactly.

Q. Is that true and correct?

A. Yes sir.

Q. Was anybody else the agent of that company during that time?

A. No sir.

Q. You made for your company, for the years 1907 and 1908, returns under oath of those premiums?

A. Yes sir.

Q. Did you authorize Mr. Wright to make the application for your company?

A. Yes, I did.

Q. To the Committee on Revision and to the Board of Assessors?

A. Yes sir.

Q. You heard the testimony in regard to the method of conducting business; is that correct?

A. Yes sir, that is correct.

By Mr. SNEED:

55 Q. That amount that you gave for unpaid premiums,—are you referring to the amount still owed by the policy

holders to the Company, or to the amount that you still have on hand and not remitted?

A. I am referring to the amount still due to the company.

Q. When do you make your remittances?

A. Usually every forty-five days.

Q. Did you ever remit a larger amount to that company than you claim here to be owing them? In other words, what are your average monthly remittances to that company?

A. I expect the average would be about thirty five hundred dollars some years; the average has been fifteen thousand dollars for the whole year.

Q. How did you arrive at those amounts that you made the affidavit about?

A. By taking the figures from my books of the balances due at the end of each month, which balances are made by copies or postings of the daily reports to the Company of what has been written.

Dixie Fire Insurance Company.

M. FRISHMAN, who being first duly sworn by the Court, did testify as follows:

By Mr. HALL:

Q. What connection did you have on the 31st of December, 1906, or the 1st of January, 1907, with the Dixie Fire Insurance Company?

A. None whatever.

Q. What did you have to do with it on the 1st of January, 1908?

A. I am cashier in the office of the agent of that company.

56 Q. Who is the agent?

A. The Ferd Marks Insurance Agency, Limited.

Q. There is an affidavit here made by August Heidenheim that on the 1st of January, 1908, the outstanding premiums due to the Dixie Fire Insurance Company were \$187.30; and that there was no cash or money in Bank. Where is Mr. Heidenheim?

A. Sick in bed at home.

Q. Do you know anything about the correctness of these figures?

A. Yes sir.

Q. Are they correct or not?

A. They are correct.

Q. How do you know it?

A. By copying them from the Ledger, as I have them in my book.

Q. Are you the book-keeper?

A. No sir, cashier.

Q. You have a book showing that fact, in your possession?

A. Yes sir, and I know it in a general way.

Q. You don't know anything about these returns being made, do you?

A. Yes sir.

Q. Do you know that return under oath was made of this matter?

A. Yes sir, I accompanied Mr. Heidenheim in all of these matters.

Q. Who represented the company for other years?

A. I cannot say; we only represented them for this year.

London & Lancashire Fire Insurance Co.

By Mr. HALL:

57 Affidavit was made by Mr. Heidenheim for balances due under open account, for uncollected premiums of that company, as follows: January 1st, 1906, \$5928.93—January 1st, 1907, \$6,495.36—January 1st, 1908, \$4,324.20—and that there was no cash or money in Bank in the City of New Orleans at that time belonging to that company. Now, Mr. Frisham, do you know that to be correct?

A. Yes sir.

Q. Do you know whether due returns were made for account of that company?

A. Yes sir.

Q. At the respective dates named in the affidavit?

A. Yes sir.

By Mr. HALL: W. D. Wellborn, December 31st, 1906, \$1184.40.

Agreement.

It is hereby agreed, without the necessity for examining witnesses, and subject to all objections to the admissibility of the evidence, and for other causes, except those herein stated, that the following named witnesses, agents for the respective companies hereafter named, if placed upon the witness stand would testify in conformity with their affidavits, which are here in Court, that their respective companies had, on the dates specified, no cash or money on deposit, in the State of Louisiana, and that the premiums due to them under open account were as follows, and no more. And that said witnesses would testify that the method of transacting the business with respect to the collection of premiums due, and the accounting by the local agents to the general agents, and by the general agents to the home office were by the local agent the same as hereinbefore testified to by Mr. Wright and others; and it is further agreed that due sworn returns were made by these companies for the years 1907 and 1908; and application to the Board of Assessors and to the Committee on Revision of Assessment were likewise duly made.

This statement is made subject to verification by counsel, the result of their examination to be later expressed to counsel for plaintiffs.

City Attorney's Office, Room 8, City Hall, Sam'l L. Gilmore, City Attorney.

NEW ORLEANS, *December 10, 1908.*

Harry H. Hall, Esq., Hibernia Bank Bldg., City.

DEAR SIR: I find upon examination of the minutes of the Revision Committee of the City Council for the years 1907 and 1908, that the applications of foreign insurance companies, which are represented by you, for reduction of their assessments, were rejected. The admission, therefore, made by me in yesterday's trial is subject to no qualification or reservation.

Yours very truly,
(Signed)

H. G. DUPRE,
Assistant City Attorney.

59 Agricultural Insurance Company of New York.

W. D. Wellborn, Agent, December 31st, 1907. Premiums, \$1601.78

Atlanta Home Insurance Company.

Edwin Shelby, December 31st, 1905, \$2,362.85—December 31st, 1906, \$1,813.97. December 31st, 1907, \$1,831.99—

Commercial Union Fire Insurance Co. of New York.

L. Monroe—January 1st, 1906, \$362.00—January 1st, 1907, \$305.00; January 1st, 1908, \$516.00;

Empire City Insurance Company.

J. R. Hollingsworth—December 31st, 1905—nothing—December 31st, 1906—nothing—December 31st, 1907, \$296.15. During the two former years they were not doing business in the State of Louisiana.

General Marine Fire Insurance Company.

J. A. Ross—December 31st, 1905, \$907.07—December 31st, 1906, \$1022.51; December 1st, 1907, \$2013.18—and that said insurance company had in cash in bank in the City of New Orleans during those years amounts as follows:—December 31st, 1905, \$513.73—December 31st, 1906, \$402.72; December 31st, 1907, \$598.01—

60 Hanover Fire Insurance Company.

Clarence Brittin, 1906, \$1976.31; 1907, \$1175.65.
H. T. Roland,—1908, \$596.49—

London Guarantee & Accident Company, Limited.

Marshall J. Smith & Company—December 31st, 1905; December 31st, 1906, and December 31st, 1907—nothing.

New Amsterdam Casualty Company.

W. I. Moss,—December 31st, 1905, \$320.70; December 31st, 1906, \$1193.99—December 31st, 1907, \$570.54—

North British & Mercantile Insurance Co.

W. I. Moss, Dec. 31st, 1905, \$245.40; December 31st, 1906, \$483.75; December 31st, 1907, \$316.50;—

Ohio German Fire Insurance Company.

J. M. Jacobs, December 31st, 1906, \$264.45; December 31st, 1907, \$1938.75—

A. Rocquet, (same company) December 31st, 1905, \$1220.28;

Royal Insurance Company of England.

James B. Ross, December 31st, 1905, \$8271.48; December 31st, 1906, \$11,699.54; December 31st, 1907, \$8,387.00—

Sea Insurance Company.

James A. Ross, December 31st, 1905, \$13,105.63; December 31st, 1906, \$13,363.42; December 31st, 1907, \$1,408.61;

61

Svea Insurance Company.

H. S. Kaufmann, January 1st, 1907, \$1918.83; January 1st, 1908, \$1328.22;

United Firemen's Insurance Company.

L. Monroe, Jr., says the Company had not entered in the State in January, 1906; January 1st, 1907, \$490.00; January 1st, 1908, \$797.00.—

C. C. SWAYZE, who, being first duly sworn by the Minute Clerk, testified as follows:

Direct examination by Mr. HALL:

Q. Mr. Swayze, will you please state if, on behalf of any insurance company, you went to the Board of Assessors for the purpose of asking whether you could be heard on an application for the purpose of reducing your assessment?

By Mr. TERRIBERRY: If your Honor please I object; this witness is not a plaintiff in this suit, and he is going to testify about the Penn Mutual Life Insurance Company.

By the COURT: The objection is good.

By Mr. HALL: I tender the witness for the purpose of proving that he went before the Board of Assessors on the 3rd day of April,

1908, and he was informed by the Board that it would be useless for us to appear; that this matter for previous years was now in Court and until a final decision was made he felt satisfied that the Board would take no action thereon. I offer to prove by this witness that the assessor told him that, to which objection has been made, as res inter-alios acta. The objection is maintained, and this bill of exceptions is reserved.

By Mr. HALL: I offer in evidence the annual reports of the insurance department of the State of Louisiana for the years 1905, 1906 and 1907, with the understanding that in case of an appeal they need not be copied in the transcript, but may go up in the original.

By Mr. HALL: I now offer to prove that on the 4th of April, 1908, I went before the Committee on Revision of Assessments of the City Council, the Chairman whereof stated to me in view of the pendency before the Supreme Court of the question of the legality of the assessment on open accounts they were not disposed to consider applications on file with the Board of Assessors to reduce the amounts. That should the Supreme Court decide that open accounts due foreign insurance companies could not be legally assessed, it would be a useless waste of labor to consider the applications to reduce the same; and that therefore it was useless to submit to them or to discuss these applications.

By Mr. DUPRE: Counsel for defendants ask that the foregoing statement be stricken from the record, and that if counsel for plaintiffs wants to prove it that he do so by giving his testimony or by offering anything that he has in his possession, and not by offers to prove.

HARRY H. HALL, who being called by defendants, under Act 126 of 1908, and who being first duly sworn by the Court testified as follows:

Direct examination by Mr. TERRIBERRY:

Q. Mr. Hall, in the year 1907, did you make application to the Board of Assessors for abatement in the case of these various insurance companies?

A. Only in so far as Mr. Wright made them and as the letter which I read shows; I don't remember the date.

Q. Did you go with Mr. Wright to the Board of Assessors?

A. I did not.

Q. Did you ask the Board of Assessors yourself to have a hearing in 1907 on this application?

A. I have no recollection of having done so; I believe not.

Q. Did you go in 1908 with Mr. Wright to make application to the Board of Assessors for abatement of this assessment?

A. I did not.

Q. Did you ask the Board of Assessors for a hearing upon your application for abatement of these assessments?

A. Yes; I want to state this; to the best of my recollection and belief, as by memoranda which I made at that time, that I went

64 to the Board of Assessors, and at that time the Committee on Revision of Assessments was in session. It was too late then to make an application to the Board of Assessors for abatement.

Q. Did you ask the Board of Assessors at the time that you filed your application for abatement and prior to the time that you took it to the Committee of the Council that you be permitted to offer evidence to the Board of Revision sustaining your application for a reduction of these assessments?

A. I believe not, to the best of my recollection.

By Mr. DUPRE:

Q. What relations had you with the Committee on Revision of the City Council in connection with these assessments for the year 1907?

A. Nothing except I was consulted upon the petition which was drafted and submitted to them by Mr. Wright.

Q. I am inquiring in reference to the Revision Committee during the year 1907. You made no appearance before them at all during that year?

A. No I did not.

Q. What happened in the year 1908, with regard to your appearance or non-appearance before the Revision Committee on these matters?

A. Speaking to the best of my knowledge and belief, and from memoranda which I made at that time, I received a letter from Mr. Swayze stating that he had gone to the Assessment office and asked to be heard and they had told him the matter was pending before the Court and that they didn't care to hear him; and I went up there on behalf of his company and these other companies, and I spoke to Mr. Gauche and he told me that these matters were pending before the Supreme Court and that it had seemed to him to be a useless waste of time to go into an examination of the merits of these numerous applications, and I asked him then:

65 If the Committee on Revision of Assessments was in session. He told me it was, and he went with me in the room where it was in session and the chairman arose, and I stated to him what Mr. Gauche had said to me, and he made that same statement that Mr. Gauche made,—that the matter was pending before the Courts and that it would be useless to examine witnesses in support of these applications.

Q. To the best of your knowledge and belief, refreshed by the contemporaneous memoranda made by you at the time,—when was that?

A. The 4th of April, 1908.

Q. Who was chairman of the Committee?

A. I don't know his name.

Q. Is Mr. Swayze in the fire insurance business?

A. No sir, life insurance.

Q. Is he connected with this litigation here to-day?

A. No sir, not in these particular suits.

Q. Is your application pending there in behalf of Mr. Swayze?

A. No sir, but in behalf of all of the other companies. I desire to say that if the Committee on Revision of Assessments desired evidence I was prepared to offer the evidence under protest; in other words they had made these assessments for sums largely in excess of the amounts that were due, and I understood in my several conversations with the Board of Assessors, represented by Mr. Gauche, that all they wanted ultimately, if the validity of the assessment was upheld by the Supreme Court, the actual amounts due and that they didn't want an assessment for eight or ten times more standing upon the books for outstanding premiums due, because I thought it was an outrage to have an assessment of that kind to stand upon the books, and they told me just what I have stated,—that if the tax was invalid what was the use of going into a discussion of the matter.

By Mr. SNEED:

Q. The day that you went there were you prepared to make proof with your witnesses?

A. I want to say if they would have permitted me I could have had my witnesses there in one hour; because there was Mr. Wright with whom I was in constant touch and communication, and all their affidavits are on file there.

By Mr. HALL: The Michigan Fire & Marine Insurance Company has no local agent; the following balances were returned January 1st, 1903, \$1,442.41; January 1st, 1907, \$1350.85; January 1st, 1908, \$4,214.52; no cash or money on deposit.

Southern National Insurance Co. of Texas—January 1st, 1908, \$1985.91; no cash or money on deposit and did not enter State until 1907.

Firemen's Insurance Company of Newark.—January 1st, 1907, \$392.49—January 1st, 1908, \$1469.86; no money and no cash on deposit.

Adjourned:

A true and correct report.

(Signed)

A. G. OLIVIERA,

Stenographer.

67 It is admitted that the Liverpool & London & Globe Insurance Co. of New York for 1907. (Civil District Court, No. 83704, Div. C) was assessed:

| | |
|---|-------------|
| "Money loaned on interest, all credits, etc., in the sum of | \$10,510.00 |
| That on the 1st of January, 1907, all of its outstanding credits only amounted to | \$6,478.85 |
| And that it has paid its State and City Taxes on the assessment against it of money in possession | \$955.00 |

which is not disputed.

It is hereby agreed that this Company made, under protest, due returns for the year 1907 of its uncollected premiums, and that it

made due application for the reduction of the assessment to the of Assessors and the Committee on the Revision of Asses which applications were refused, and that this suit was du before Nov. 1, 1907.

Endorsed on reverse: No. 86833. Civil District Court. Insurance Co. vs. Board of Assessors, et als. Offered in evidence pl'ff. Filed March 8th, 1909. (Sig.) Joe Garidel, Dy. Clk.

Motion to Set Case for Argument.

Filed January 21st, 1909.

Civil District Court, Division "C."

No. 86833.

ORIENT INSURANCE COMPANY

VS.

BOARD OF ASSESSORS et al.

On motion of Hall and Monroe of counsel for plaintiff ordered that this consolidated case be set for argument for the day of January, 1909.

68

Plea of Prescription.

Filed Jan. 22, 1909.

Civil District Court, Division "C."

No. 86833.

ORIENT INSURANCE COMPANY

VS.

BOARD OF ASSESSORS et al.

Now into Court come the Board of Assessors for the Parish of Orleans, John Fitzpatrick, State Tax Collector for the City of Orleans, and the City of New Orleans, made defendants herein reserving the benefit of each and every plea, exception and herein filed, and in no wise abandoning same, but by way of exception to plaintiff's demand plead:

That the demand contained in plaintiff's petition for reduction of assessment for the years 1906 and 1907, not having been made within the time prescribed by section 26 of Act 170 of 1898, before the first day of November of each year for which assessment is made, is under the law prescribed, which prescription is hereby specially pleaded.

Wherefore defendants pray that this plea of prescription be sustained, and that plaintiff's suit in so far as it seeks to have

assessments for the aforesaid years of 1906 and 1907 reduced be dismissed with ten per cent attorney's fees on the taxes and penalties therein involved and for costs and general relief.

(Sg.)

F. C. ZACHARIE,

Attorney for the State Tax Collector.

GEO. H. TERRIBERRY,

Attorney for Board of Assessors.

H. G. DUPRE,

Attorney for City of New Orleans.

HARRY P. SNEED,

Of Counsel.

69

Agreement.

It is agreed between counsel for plaintiff and defendants that the foregoing plea of prescription shall apply to each and every one of the cases tried in connection with the above named case as fully and as thoroughly as if filed in each of said cases.

(Sg.)

HALL & MONROE,

Attorney- for Plaintiff Insurance Companies.

HARRY P. SNEED,

Of Counsel for Defendants.

Agreement.

Filed March 9th, 1909.

Civil District Court, Division "C."

No. 86833.

ORIENT INSURANCE COMPANY

vs.

BOARD OF ASSESSORS et als.

It is admitted that Otto F. Briede, if placed on the stand would state that he is now and has been City Treasurer since December 1904; that in the collection of City taxes on personal property it is his custom to send to all persons the accompanying notices, Marked D-1, and D-2; that in the year 1906 notice marked D-1 was sent to all persons by whom personal taxes were due between October 8 and October 18, 1906; that the notice marked D-2 was similarly sent between December 5 and December 14, 1906; that in the year 1907 such action was taken between October 7 and October 21, 1907, as to notice marked D-1, and as to notice marked D-2 between December 16th, and December 27, 1907; that in the year 1908,

notice marked D-1 was sent between July 8 and July 20, 1908, and notice marked D-2 was sent between November 9,

and November 21, 1908; that said notice- were sent between said dates to the various insurance companies, plaintiffs herein, and plaintiffs in the other consolidated cases pending in the other divisions of the Court.

It is admitted that the blanks in said notices were filled so as to show the various items constituting the assessment against each insurance company.

It is admitted that city taxes on personal property became delinquent in the year 1906 on June 21, 1906, in 1907 on June 21, 1907, and in 1908 on June 22, 1908.

(Sg.)

HALL & MONROE,
Attorneys for Plaintiffs.

H. G. DUPRE,
Assistant City Att'y.

GEO. H. TERRIBERRY,
Attorney for Board of Assessors.

F. C. ZACHARIE,
Attorney for State Tax Collector.

71 EXHIBIT D-1—(BLANK FOR TAXES ON MOVABLE PROPERTY)
OFFERED BY DEFENDANTS.

Filed March 8th, 1909.

B 1 D 1

Bill No.

Taxes of 1908 Movable Property.

Office Treasurer City of New Orleans Room 2, City Hall.

NEW ORLEANS.....1908.

To.....

.....Street.

.....Assessment District. Square No.....

You are hereby notified, in conformity with the provisions of the Constitution and Laws of the State of Louisiana and ordinances of the City of New Orleans, that the City Taxes assessed to you on Movable Property, viz:

.....
.....

In this City, for the current year amounting to.....Dollars (the assessed value of said movable property being.....Dollars) fell due on the 22nd day of May, 1908, and should have been paid in full on or before June 22nd, 1908, that you became delinquent for said taxes on the 23th day of June, 1908; from that date a penalty of ten per cent per annum interest is imposed on the amount of taxes due; that after the 1st day of November, 1908, I will seize and ad-

vertise for sale the movable property on which said taxes are due, in the manner provided by law for judicial sales; that at the place of seizure I will sell within the legal hours for judicial sales, for cash, and without appraisement, such portion of said movable property as you may point out and deliver to me; and in case you shall not point out sufficient property I will at once without further delay sell for cash without appraisement, the least quantity of said property that any bidder will buy for the amount of taxes assessed upon the same, with interest and costs, or take such other steps against the property assessed or other personal property you may possess as may be necessary to collect said taxes with interest and all costs according to law.

Respectfully yours, OTTO F. BRIEDE,
Treasurer of the City of New Orleans.

[Printed on margin:] Bring this notice with you.

[Endorsed:] No. 86,833. Civil District Court. Oriental Ins. Co. v. Board of Assessors et als. Offered in evidence by defendant. Filed March 8, 1909. (Signed) Joe Garidel, D'y Cl'k.

72 EXHIBIT (BLANK) OFFERED BY DEFENDANT.

Filed March 8th, 1909.

D. 2

Office of Treasurer of City of New Orleans,
 Room No. 2, City Hall.

Otto F. Briede, Treasurer.

NEW ORLEANS.....190-

M.....

SIR: You are delinquent for taxes on movable property due the City of New Orleans for the year 1908 as hereinafter stated. You are hereby notified to come forward *within three days from date of service of this notice and pay the same, in default of which I will proceed to seize and take into my possession so much of said movable property as may be requisite to pay the said taxes with interest and costs, or place a keeper upon the same preparatory to advertisement and sale; or take such other steps against said property or other movable property or assets you may have as may be necessary to collect the said taxes, etc., by virtue of the authority vested in me by the Constitution and laws of the State of Louisiana, and of the ordinances of the City of New Orleans.*

Assessments on the Rolls, Assessment District, Square No.

Bill No.

.....

.....

.....

Amounts Due.

Taxes

Interest

Cost

Total

Respectfully,

Deputy Treasurer of the City of New Orleans.

[Endorsed:] No. 86,833. Civil Dist. Court. Oriental Insurance Co. v. Board of Assessors et als. Offered in evidence by def'd'ts. Filed March 8, 1909. (Signed) Jos. Garidel, D'y Cl'k.

73

Judgment.

Rendered April 29th, 1909; Signed May 5th, 1909.

Civil District Court, Division "C."

No. 86833.

ORIENT INSURANCE CO.

vs.

BOARD OF ASSESSORS et al.

In this matter submitted for adjudication the law and the evidence considered and for the reasons orally assigned, in open Court, on this day.

It is ordered, adjudged and decreed that there be judgment in favor of the plaintiffs,

1. Agricultural Insurance Co., of Watertown, N. Y.
2. Atlanta Home Insurance Company of Atlanta, Ga.
3. Commercial Union Fire Ins'ce Co. of New York.
4. Dixie Fire Insurance Co. of Greensboro, N. C.
5. Empire City Fire Ins'ce Co.
6. Firemen's Fund Ins'ce Co. of San Francisco.
7. Firemen's Ins'ce Co. of Newark, N. J.

8. General Marine Ins'ce Co. of Dresden.
 9. Hanover Fire Ins'ce Co. of New York.
 10. London Guarantee & Accident Co. of Chicago.
 11. London & Lancashire Ins'ce Co.
 12. Metropolitan Casualty Ins'ce Co.
 13. Michigan Fire & Marine Ins'ce Co. of Detroit.
 14. New Amsterdam Casualty Ins'ce Co.
 15. North British & Mercantile Ins'ce Co. of New York.
 16. Ohio German Fire Ins'ce Co. of Toledo.
 17. Orient Fire Ins'ce Co. of Hartford.
 18. Royal Insurance Co. Ltd.
 19. Sea Insurance Co. Ltd. of London and Liverpool.
 - 74 20. Svea Insurance Company.
 21. Southern National Ins'ce Co. of Austin.
 22. United Firemen's Ins'ce Co. of Philadelphia.
 23. United States Lloyds of New York.
 24. Virginia State Insurance Co., and against the defendants, the Board of Assessors, the State Tax Collector and the City of New Orleans as follows, to-wit:
 1. Cancelling and annulling the assessment against each of said plaintiffs for "Cash &c." and money in possession for the years 1903-1907 and 1908, except that the assessment for said three years against the General Insurance Company of Dresden shall remain unchanged.
 2. Reducing the assessments against each of said plaintiffs for "Credits, Bills Receivable &c." for the years 1906 and 1908 to the amount of "Outstanding Premiums" as shown on the "Stipulation" this day herein filed by all parties; but leaving the assessment against each of said plaintiffs, on "Credits, Bills Receivable &c." to remain unchanged for the year 1907, except that the assessments against the London Guarantee and Accident Co., of Chicago shall be cancelled in full for each of said years, 1906, 1907 and 1908; and excepting also that the assessments against any of said plaintiffs shall in no event be reduced below the amount to which they have asked to be reduced as also shown in said stipulation.
- It is further ordered, adjudged and decreed that each of said plaintiffs pay a penalty of 10% on the amount of State taxes upon any reduction or cancellation herein asked and not granted.
- Judgment read and rendered in open Court April 29th, 1909.
- Judgment signed in open Court May 5th, 1909.

(Sg.)

E. K. SKINNER, *Judge.*

No. 86833.

ORIENT INSURANCE COMPANY

VS.

BOARD OF ASSESSORS et al.

Stipulation.

It is hereby agreed by counsel for plaintiffs and defendants that the following is a true and correct statement of the assessments for the years named which were levied as against the Companies as hereinafter set out; and likewise, of the sums to which they sued to have said assessment reduced and of the actual amounts of outstanding premiums and cash.

| | Year. | Assessment. | Reduction asked. | Outstanding premiums. |
|--|--------|-------------|------------------|-----------------------|
| Agricultural Insurance Com. of Watertown, N. Y., | { 1906 | \$4600.00 | \$800.57 | \$800.57 |
| No. 87405..... | { 1907 | 4125.00 | 1603.04 | 1600.04 |
| No cash..... | { 1908 | 4745.00 | 1601.72 | 1601.78 |
| Atlanta Home Insurance Co. of Atlanta, Ga., No. | { 1906 | 4600.00 | 2362.85 | 2362.83 |
| 86840..... | { 1907 | 3570.00 | 1813.77 | 1813.77 |
| No. cash..... | { 1908 | 3570.00 | 1891.39 | 1831.99 |
| Commercial Union Fire Insurance Company of | { 1906 | 27500.00 | 362.00 | 362.00 |
| New York, No. 86899..... | { 1907 | 29175.00 | 305.00 | 305.00 |
| No cash..... | { 1908 | 29100.00 | 516.00 | 516.00 |
| Dixie Fire Insurance Company of Greensboro, | { 1906 | Admitted | Sept. 26 | 1906 |
| N. C., No. 80905..... | { 1907 | 2830.00 | | 1184.40 |
| No cash..... | { 1908 | 2830.00 | 1177.33 | 187.30 |
| Empire City Fire Insurance Co., No. 87191..... | { 1906 | Not in | State till | 1907 |
| No cash..... | { 1908 | 7483.00 | 296.15 | 296.15 |

| | | | | |
|--|------------------------|----------------------------------|--|-------------------------------|
| Firemen's Fund Insurance Co. of San Francisco, No. 86879..... | { 1906 1907 1908 | 24000.00 24000.00 24000.00 | 7004.51 4802.60 4511.57 | 2907.40 2251.72 1389.83 |
| No cash..... | { 1906 1907 | Not in 1385.00 | State 696.49 | 692.49 |
| Firemen's Insurance Co. of Newark, No. 86880..... | { 1906 1907 1908 | 5000.00 4000.00 5170.00 | 1469.86 Nothing 744.00 | 1469.86 907.07 1022.51 |
| 76 No cash..... | { 1906 1907 1908 | 5580.00 400.00 400.00 | 698.00 | 2013.18 400.00 400.00 |
| General Marine Insurance Co. of Dresden, No. 86956..... | { 1906 1907 1908 | 400.00 4010.00 4010.00 | 1976.31 1175.65 | 400.00 1976.31 1175.65 |
| Cash..... | { 1906 1907 1908 | 8000.00 1295.00 1295.00 | 596.49 Nothing do. | 596.49 None do. |
| Hanover Fire Insurance Co. of New York, No. 86837..... | { 1906 1907 1908 | 16000.00 16500.00 16500.00 | Nothing 101.55 104.45 | Nothing do. p. 50-52 |
| No cash..... | { 1906 1907 1908 | Nothing Nothing 4000.00 | As per affidavit and administration. 5928.93 6495.36 4324.20 | 5928.93 6495.36 4324.20 |
| London Guarantee & Accident Co. Ltd. of Chicago, No. 86854..... | { 1906 1907 1908 | Nothing Nothing 7500.00 | 123.35 101.55 104.45 | 123.35 101.55 104.45 |
| No cash..... | { 1906 1907 1908 | Nothing Nothing 4000.00 | 1442.41 1350.85 4214.52 | 1442.41 1350.85 4214.52 |
| London & Lancashire Fire Insurance Company, No. 86853..... | { 1906 1907 1908 | Nothing Nothing 4000.00 | 1442.41 1350.85 4214.52 | 1442.41 1350.85 4214.52 |
| No cash..... | { 1906 1907 1908 | Nothing Nothing 4000.00 | 1442.41 1350.85 4214.52 | 1442.41 1350.85 4214.52 |
| Metropolitan Casualty Insurance Co., No. 86957..... | { 1906 1907 1908 | Nothing Nothing 4000.00 | 1442.41 1350.85 4214.52 | 1442.41 1350.85 4214.52 |
| No cash..... | { 1906 1907 1908 | Nothing Nothing 4000.00 | 1442.41 1350.85 4214.52 | 1442.41 1350.85 4214.52 |
| Michigan Fire & Marine Ins. Co. of Detroit, No. 86860..... | { 1906 1907 1908 | Nothing Nothing 4000.00 | 1442.41 1350.85 4214.52 | 1442.41 1350.85 4214.52 |
| No cash..... | { 1906 1907 1908 | Nothing Nothing 4000.00 | 1442.41 1350.85 4214.52 | 1442.41 1350.85 4214.52 |

| | Year. | Assessment. | Reduction asked. | Outstanding premiums. |
|---|--------|-------------|------------------|-----------------------|
| New Amsterdam Casualty Insurance Company, | { 1906 | 3500.00 | 320.70 | 320.70 |
| No. 87173..... | { 1907 | 4075.00 | 1193.99 | 1193.99 |
| No cash..... | { 1908 | 6765.00 | 1088.91 | 570.54 |
| North British & Mercantile Ins. Company of New | { 1906 | 25000.00 | 3172.25 | 245.40 |
| York, No. 86857..... | { 1907 | 24335.00 | 2008.40 | 483.75 |
| No cash..... | { 1908 | 24365.00 | 3296.70 | 316.50 |
| Ohio German Fire Insurance Co. of Toledo, No. | { 1906 | 6600.00 | Nothing | 937.92 |
| 86759 | { 1907 | 5600.00 | 2922.00 | 1220.28 |
| No cash..... | { 1908 | 15320.00 | 3230.44 | 1938.75 |
| Orient Insurance Company of Hartford, No. 86833.. | { 1906 | 15000.00 | 2529.45 | 2529.45 |
| No cash..... | { 1907 | 15930.00 | 1044.38 | 1489.23 |
| No cash..... | { 1908 | 15930.00 | 2398.75 | 2316.82 |
| 77 Royal Insurance Company, Ltd., No. 86847.. | { 1906 | 45000.00 | 8359.59 | 8271.48 |
| No cash..... | { 1907 | 52310.00 | 12409.66 | 11699.54 |
| No cash..... | { 1908 | 58715.00 | 8674.40 | 8387.00 |
| Sea Insurance Company Ltd., of London & of Liv- | { 1906 | 36000.00 | Nothing | 13105.63 |
| erpool, No. 86915..... | { 1907 | 33355.00 | 34.14 | 13363.42 |
| No cash..... | { 1908 | 33355.00 | 1407.16 | 1408.61 |
| Svea Insurance Company, No. 86922..... | { 1906 | 5000.00 | 1918.00 | 1918.83 |
| No cash..... | { 1907 | 5000.00 | 2428.00 | 1328.22 |
| Southern National Insurance Co. of Austin, No. | { 1908 | 5000.00 | 1328.00 | 1407.16 |
| 86929 | { 1906 | Not in | State | Nothing |
| No cash..... | { 1907 | do. | do. | do. |
| No cash..... | { 1908 | No asst. | 1986.91 | 1986.91 |
| United Firemen's Insurance Co. of Philadelphia, | { 1906 | No asst. | Nothing | None. |
| No. 86923..... | { 1907 | 3670.00 | 490.00 | 490.00 |
| No cash..... | { 1908 | 3670.00 | 797.00 | 497.00 |

| | | | | |
|--|--------|----------|---------|---------|
| United States Lloyd of New York, No. 86862..... | { 1906 | 1200.00 | 973.07 | 1826.00 |
| | { 1909 | 4195.00 | 1217.00 | 1130.00 |
| No cash..... | { 1908 | 4195.00 | 3152.00 | 6213.00 |
| Virginia State Insurance Company, No. 86869..... | { 1906 | 13200.00 | 4013.81 | 4013.81 |
| | { 1907 | 10435.00 | 3936.00 | 3936.00 |
| No cash..... | { 1908 | 10435.00 | 5347.00 | 5347.00 |

It is further agreed that in case of appeal the petitions, answers and exceptions need not be copied in the Transcript but that one printed form of each of said pleadings may go up in the original.
N. O., April 20th, 1909.

(Sg.)

HALL AND MONROE,
Att'ys for Plaintiff.
HARRY P. SNEED,
Of Counsel, State Tax Collector.
GEO. H. TERRIBERRY,
Atty., Bd. of Assessors.
H. G. DUPRE,
Attorney, City of N. O.

Judgment Signed.

Extract from the Minutes of May 5th, 1909.

Present: Hon. E. K. Skinner, Judge.

The judgment in this case rendered in open Court on April 29th, 1909, was signed in open Court on this day.

Motion for a New Trial.

Filed May 6th, 1909.

Civil District Court, Division "C."

No. 86833.

ORIENT INSURANCE COMPANY

VS.

BOARD OF ASSESSORS et al.

On motion of Hall & Monroe of counsel for plaintiff, it is ordered that defendants show cause on Friday, March 26th, at 11 A. M. why a new trial should not be granted herein for the following among other reasons, to-wit:

1. That said judgment is contrary to the law and the evidence.

2. There is no warrant in law for the levy of the assessment and tax in question.

3. Under the evidence and the admitted facts the assessments in question are absolutely illegal, and would, if enforced deprive movers of their property without due process of law.

4. The refusal of the assessing officers to comply with the terms of the Revenue Acts and their refusal to hear movers on the question of reducing the assessments, renders the same absolutely null and void.

5. The limitations of the Revenue Act have no application where the parties are acting in good faith, and where by tacit agreement, such proceedings were stayed by both parties to await the decision of the Supreme Court as to the validity of the tax.

New Trial Refused.

THURSDAY, May 6th, 1909.

Plaintiff having this day presented a rule and application for new trial, for the reasons orally assigned, the said rule is dismissed and plaintiff's application is refused at his cost.

Motion for a Suspensive Appeal.

Filed May 12th, 1909.

Civil District Court.

Consolidated.

No. 86833,

ORIENT INSURANCE COMPANY

vs.

BOARD OF ASSESSORS.

On motion of Hall & Monroe, of counsel for the following named companies, plaintiffs herein, to-wit:

1. Agricultural Insurance Company.
2. Atlanta Home Insurance Company.
3. Commercial Union Fire Insurance Company.
4. Dixie Fire Insurance Company.
5. Empire City Fire Insurance Company.
6. Firemen's Fund Insurance Company.
7. Firemen's Insurance Company.
8. General Marine Insurance Company.
9. Hanover Fire Insurance Company.
10. London & Lancashire Insurance Company.
11. Metropolitan Casualty Insurance Company.
12. Michigan Fire & Marine Ins. Company.
- 80 13. New Amsterdam Casualty Insurance Co.
14. North British & Mercantile Insurance Co.
15. Ohio German Fire Insurance Co.
16. Orient Fire Insurance Co.
17. Royal Insurance Company.
18. Sea Insurance Company, Ltd.
19. Svea Insurance Company.
20. Southern National Insurance Co.
21. United Firemen's Insurance Co.
22. United States Lloyd's.
23. Virginia States Insurance Co., and of the said companies and on suggesting that a judgment was herein rendered against them on the 29th., of April, and signed on the 5th., of May, 1909, and that they desire to appeal from the said judgment suspensively it is ordered that they be allowed a suspensive appeal herein, returnable to the Supreme Court of Louisiana on the 7th., day of June, 1909, upon their furnishing bond conditioned as the law directs; in the full sum of One thousand dollars.

Appeal Bond.

Filed May 13th, 1909.

Know all men by these presents That we Orient Fire Ins. Co., and other companies plaintiff herein as per annexed List or Exhibit "A" as principal, and American Surety Company, of New York, State of New York, as surety, are held and firmly bound unto Thos. Connell Clerk of the Civil District Court for the Parish of Orleans, his successors, executors, administrators and assigns, in the sum of one thousand dollars, for the payment whereof we bind ourselves, our heirs, executors and administrators, firmly by these presents sealed with our seal, and dated in the City of New Orleans on

81 this — day of May in the year of our Lord, one thousand eight hundred and ninety nine.

Whereas, the above bounded Insurance Companies, plaintiffs in above consolidated cases has this day filed a motion of appeal from a final judgment rendered against them in the suit of Orient Fire Insurance Company vs. Board of Assessors & al., consolidated case, No. 86833 of the Civil District Court for the Parish of Orleans on the 29th day of April, 1909, and signed on the 5th day of May, 1909.

Now the condition of the above obligation is such, That the above bounden plaintiffs, principals shall prosecute their said appeal, and shall satisfy whatever judgment may be rendered against them or that the same shall be satisfied by the proceeds of their estate real or personal, if they be cast in the appeal, otherwise that the said American Surety Company of New York, State of New York, shall be liable in their place.

(Sg.)

ORIENT FIRE INS. CO.,
And All Companies Named Above, Being All
Plaintiffs in said Suit,
 By HALL & MONROE, Att'ys.

[SEAL.]

AMERICAN SURETY COMPANY OF
 NEW YORK,
 By PETER F. PESCU, *Res. Vice President.*

Attest:

CHAS. HOFFMAN,
Res. Assistant Secretary.

EXHIBIT "A" ANNEXED TO BOND (NAMES OF INSURANCE COMPANIES PLAINTIFFS).

Agricultural Insurance Company of N. Y.
 Atlanta Home Insurance Company.

82 Commercial Union Fire Insurance Company of New York.
 Dixie Fire Insurance Company.
 Empire City Fire Insurance Company.

Firemen's Insurance Company of Newark.
 Firemen's Fund Insurance Corporation.
 General Marine Insurance Company.
 Hanover Fire Insurance Company.
 London & Lancashire Fire Insurance Co.
 Metropolitan Casualty Company.
 Michigan Fire & Marine Insurance Co.
 New Amsterdam Casualty Company.
 North British and Mercantile Insurance Company.
 Ohio German Fire Insurance Company.
 Orient Insurance Company.
 Royal Insurance Company of England.
 Sea Insurance Company.
 Southern National Insurance Company.
 Svea Insurance Company.
 United Firemen's Insurance Company.
 United States Lloyd's Marine Insurance Co.
 Virginia State Insurance Company.

EXHIBIT (SAMPLE COPY OF PETITION) OFFERED BY PLAINTIFF.

Filed May 18th, 1909.

Civil District Court, Division "A."

No. 86833.

ORIENT INSURANCE COMPANY

VS.

BOARD OF ASSESSORS et al.

To the Honorable the Judges of the Civil District Court for the Parish of Orleans:

83 The petition of — a corporation organized under the laws of the State of —, and domiciled in —, with respect represents:—That the Board of Assessors for the Parish of Orleans, arbitrarily, illegally, and in utter disregard of their official obligations, made against your petitioners, for the respective years named, the following pretended assessments:

Money loaned on interest, all credits and bills receivable for money loaned on interest or advanced, or for goods sold."

For 1906, the sum of —.

For 1907, the sum of —.

For 1908, the sum of —.

And for "cash or money in possession":

For 1906 —.

For 1907 —.

For 1908 —.

Now, your petitioner avers that it had not, in any of the years named, in this city or State, any "cash or money in possession."

That the only credits, of any kind, for money due to it were uncollected premiums, due, under open account, for premiums on insurance policies issued from its domicile; and your petitioner avers that no legal assessment thereof can be made, nor any tax thereon legally collected, and that all of such assessments are illegal, null and unconstitutional, for the following among other reasons—to-wit:

1. The Legislature has not the power to localize an abstract credit away from the domicile of the creditor, the State power of taxation being limited to persons, property or business within its jurisdiction.

2. The levying of a tax upon incorporeal things, such as abstract credits, not in so called concrete form, and without tangible shape,

violates the Fourteenth Amendment of the United States

84 Constitution.

3. The Revenue Acts of the State of Louisiana do not purport or pretend to authorize the assessment or the levy of a tax upon premiums due to foreign insurance companies under open, unliquidated accounts.

4. The Constitution of the State of Louisiana prohibits the collection of taxes by suit, and, inasmuch as such open accounts cannot be seized for taxes, and could only be collected by suit, such suit and such collection would violate Article 232 of said Constitution.

5. The Legislature, by Act 170 of 1903, has affirmed the interpretation by the Supreme Court of Louisiana of its Revenue Acts by declaring that all evidence of indebtedness shall be taxable only at the situs or domicile of the owner *whereof*.

6. The illegal assessment on which the tax claimed is based is absolutely void because it is so grossly excessive as to be inconsistent with an honest judgment, and is so unequal and discriminating as to violate the fundamental law.

In making said illegal assessment, the Board of Assessors did not exercise fairly and intelligently the powers conferred upon them, but they arbitrarily and illegally took as the basis for said pretended assessment of such insignificant amount of uncollected premiums as might be outstanding, at the end of the year, the total sum of the gross premiums earned by respondent on all of its policies for the entire year.

Respondent avers that the Board of Assessors refused to hear or consider respondent's sworn application for a reduction stating that, inasmuch as the question of the legality of the tax was pending before the Courts, it would be a waste of time to consider the applica-

tion for reduction of an assessment which might be altogether
85 null; and respondent avers that the Committee on the Revision of Assessments took the same position and declined to hear respondent or consider the question of the real value of its assessments; and the said Board and Committee never considered the real value or amount of the said premiums, nor attempted to ascertain the same. And, because of these acts and refusal, respondent avers that the said assessment is null and void.

Your petitioner avers that, for the year 1903, it made no return for assessment or taxation on these open accounts, the same never

having before been assessed, and that it was not aware of the said assessment until too late to apply for cancellation thereof.

That for the year 1907 and 1908 it made due return and due application, and complied with all the requirements of the law, making its return under protest, denying that any legal assessment thereof could be made or taxes collected, and making its return solely for the purpose of limiting the correct amount of the tax thus sought to be collected should the court maintain its legality, which legality was denied; and that thus, under protest, it returned or had:

For 1903, uncollected premiums,

For 1907, uncollected premiums,

For 1908, uncollected premiums,

Wherefore, your petitioner prays that the Board of Assessors for the Parish of Orleans, the City of New Orleans and the State Tax Collector for the First District be cited to appear and answer this petition, and that, after due proceedings had, there be judgment in your petitioner's favor and against the said defendants, decreeing that the said assessments of credits, bills receivable, cash on hand and money in possession, and all taxes thereunder, be declared to be illegal, unconstitutional, null and void, and that the same
86 be ordered cancelled from the assessment rolls for the respective years 1906, 1907 and 1908; and that, in the alternative, should the said assessment be held to be illegal, the amounts of the said assessment be reduced:

For 1903 to —.

For 1907 to —.

For 1908 to —.

Petitioner prays for all general and equitable relief.

(Sg.)

HALL & MONROE, Attorneys.

August, 1908.

Certificate.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I, L. W. Gunther, Dy. Clerk of the Civil District Court for the Parish of Orleans, do hereby certify that the foregoing eighty six (86) pages do contain a true, correct and complete transcript of all the proceedings had, documents filed and evidence adduced upon the trial of the cause wherein Orient Insurance Company et als. are plaintiffs and Board of Assessors, et als. are defendants instituted in this Court and now in the records thereof under the No. 86833 of the Docket thereat, Division "A," the Hon. T. C. W. Ellis, Judge.

Three (3) Insurance Reports for the years 1905, 1906 and 1907 offered in evidence by Counsel for plaintiffs, and two (2) blank notices, offered in evidence by Counsel for defendants are
87 forwarded in the original as filed.

In testimony whereof, I have hereunto set my hand and affixed the impress of the seal of said Court, at the City of New

Orleans, on this seventh day of June, in the year of our Lord, one thousand, nine hundred and nine, and in the one hundred and thirty-third year of the Independence of the United States of America.

(Signed)

L. W. GUNTHER, [SEAL.]
Dy. Clerk.

88 Proceedings Had in the Supreme Court of the State of Louisiana.

Transcript Filed.

No. 17713.

ORIENT INSURANCE COMPANY et al.

vs.

BOARD OF ASSESSORS et al.

Filed June 7th, 1909.

(Signed)

PAUL E. MORTIMER,
Dep. Clerk.

Answer to Appeal.

Supreme Court of Louisiana.

No. 17713.

ORIENT INS. Co. et al.

vs.

BOARD OF ASSESSORS et al.

Now into the Honorable Court through their undersigned counsel, come the Board of Assessors for the Parish of Orleans, John Fitzpatrick State Tax Collector for the City of New Orleans, and the City of New Orleans, defendants and appellees in the above entitled and numbered cause, and for answer to the appeal herein taken by the Orient Insurance company and associated plaintiffs, and appellants and made returnable to this Honorable Court on June 7th, 1909, the first Monday in said month, say:

That the Court *a qua* erred in overruling the exception of no cause of action and the plea of prescription herein filed by defendants and reducing the assessments herein complained of for the year 1903, and that this portion of the judgment appealed from should be reversed by sustaining said exception of no cause of action and said plea of prescription, and dismissing this part of plaintiffs and appellants' demand, with ten per cent attorney's fees on the taxes involved.

Wherefore respondents pray that the judgment herein appealed from be amended by sustaining the exception of no cause of action and the plea of prescription herein filed by defendants, that plaintiffs and appellants demand for a reduction of the assessments for

89 the year 1906 be rejected with ten per cent attorneys fees on the taxes involved, and that in all other respects the judgment be affirmed with costs in both courts.

(Signed) F. C. ZACHARIE,
Attorney, State Tax Collector.
(Signed) GEO. H. TERRIBERRY,
Attorney, Board of Assessors.
(Signed) H. GARLAND DUPRÉ,
Attorney, City of New Orleans.
(Signed) HARRY P. SNEED,
Of Counsel.

Agreement.

It is agreed that this answer applies to the appeal of each plaintiff & Appellant herein.

(Signed) HALL & MONROE,
Atty's for Plff.
(Signed) HARRY P. SNEED,
Of Counsel for Respondents.

(Endorsed:) No. 17,713. Supreme Court of Louisiana. Orient Insurance Co. vs. Board of Assessors et al. Answer to Appeal. Filed July 23, 1909. (Signed) Paul E. Mortimer, Clerk.

Called, Argued and Submitted.

(Extract from Minutes.)

NEW ORLEANS, Thursday, October 21st, 1909.

The Court was duly opened, pursuant to adjournment. Present their Honors, Joseph A. Breaux, Chief Justice; and Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land, Associate Justices.

No. 17713.

ORIENT INSURANCE COMPANY
vs.
BOARD OF ASSESSORS et al.

This cause came on this day to be heard and was argued by counsel;—Mr. Harry H. Hall, opened for the plaintiffs, appellants; Mr. H. P. Sneed, replied for the State Tax Collector, appellee; and Mr. George H. Terriberry, representing the Board of Assessors, one of the defendants and appellees, closed the argument. The
90 Court then took the cause under advisement upon the briefs and papers now on file.

Final Judgment.

(Extract From Minutes.)

NEW ORLEANS, Monday November 15th, 1909.

The Court was duly opened, pursuant to adjournment. Present their Honors:—Joseph A. Breaux, Chief Justice, and Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land, Associate Justices.

His Honer, Mr. Justice Provosty, pronounced the opinion and judgment of the Court in the following case.

No. 17713.

ORIENT INSURANCE COMPANY

VS.

BOARD OF ASSESSORS, et al.

Appeal from the Civil District Court, Parish of Orleans.

The judgment appealed from is affirmed in all particulars except that it is annulled in so far as it reduces the assessment of the year 1906 on "credits, bills receivable etc." and it is now ordered, adjudged and decreed that the suits of the plaintiffs are dismissed with costs and ten cent penalty on state taxes also as to said assessment of 1906; and that plaintiffs pay the costs of this appeal.

(Their Honors, The Chief Justice and Mr. Justice Monroe, dissent.)

Opinion of the Court.

91 Provosty, J.

MONDAY, November 15th, 1909.

No. 17713.

ORIENT INSURANCE COMPANY

VS.

BOARD OF ASSESSORS et als.

Appeal from the Civil District Court, Division "C", E. K. Skinner, Judge.

This appeal embraces twenty three consolidated suits. The plaintiffs in these several suits stand in the same category. They are insurance companies of other states and of foreign countries doing business in this state through local agents. They were assessed in the years 1906, 1907 and 1908 for money in possession, credits and open accounts; and are suing to have the assessments canceled as ille-

gal and null; or, in the alternative, reduced, as excessive. The manner in which they conduct their business in this state is the same as was that of the plaintiff in *National Fire Insurance Co. vs. Board of Assessors*, 121 La. 108; and the nullity of the assessments is claimed on precisely the same grounds as in that case, namely; that as a matter of fact, the plaintiffs have no money in possession; and that the credits or open accounts in question have no situs in this state, and therefore are not taxable in this state.

Since that decision and others in the same sense, namely: *Insurance Co. vs. Board*, 121 La. 1938; and *General Electric Co. vs. Board*, 121 La. 116; *U. S. Fidelity & Guarantee Co. vs. Board*, 122 La. 139, etc., were rendered, the legislature has passed Act. 170 of 1908, p. 230, which reads:

"Mortgage notes and indebtedness and all evidence of indebtedness shall be taxable only at the situs and domicile of the holder or owner thereof."

By this act, say counsel, the legislature has put upon the revenue law a different interpretation from that adopted by the court in said cases.

92 Sometimes, language is so plain that even legislative omnipotence cannot construe it into a different meaning from that which it plainly expresses; and that is the case with the provision of law which the court is here asked to interpret differently from what has been done heretofore. The provision is so plain as not to leave room for interpretation. The above quoted statute is a modification, not an interpretation, of the revenue law; and nothing in it indicates an intention that it should have a retroactive effect.

In so far as the suits are for reduction of the assessments, the defendant opposes to them Section 26 of the Revenue Law, which reads:

"But the action to test such correctness shall be instituted on or before the first day of November of the year in which the assessment is made."

The suits were filed in August, 1908. The assessments of 1906 and 1907 are barred, therefore, by said statute, unless the reason assigned by plaintiffs why said statute should not have application is valid.

It is claimed that there was a tacit understanding between the tax officers of the State and plaintiffs by which the officers, on the one hand, should do nothing towards the enforcement of the taxes under said assessments, and the plaintiffs, on the other hand, should take no steps to annul or reduce said assessments until the case of *Liverpool, London & Globe Ins. Co. vs. Board of Assessors*, involving the same issue, and then pending, should have been decided. For proof of there having been such an understanding, the plaintiffs show that when they applied to the board of assessors for a reduction of the assessments of 1907 and 1908, they were told that as the result of the said pending suit, said assessments might be found to be null, and that therefore until said suit should have been

93 decided it would be waste of time and labor to consider the question of their reduction. Plaintiffs show further that no steps were taken by the tax officers to exact payment of the taxes under said assessments.

Counsel for the defendants deny that there was any such understanding; and the fact that the assessors went on and made an assessment for 1908 would go towards supporting that theory. But would an understanding of that kind amount to anything even if there was one. Have the assessors and the tax collectors, together or separately, any authority to stay the operation of the tax laws of the state by agreement with tax debtors? The constitution denies that power even to the legislature. As to the assessor's want of authority in such a case, see *Railway Company vs. Davis*, 50 An. 1058.

The assessments are grossly excessive. So much so that it is manifest they were the result of mere guess work; as, indeed, is testified to by the one member of the board of assessors. More than this, the Board of Assessors was furnished by the plaintiffs with a correct return for the years 1907 and 1908. But the suit for the reduction of the assessments of 1906 and 1907 is barred by the said statute. As to them the court is powerless to grant relief. A plain and positive provision of law cannot be disregarded even for the purpose of correcting gross injustice. See to that effect *Larkin vs. Portsmouth*, 59 N. H. 25; *Dees vs. Moss Point Baptist Church*, 17 South, p. 1. See also, 30 Atlantic Rep. 345. The returns made by plaintiffs for 1908 were correct; and the assessments for that year will have to be reduced accordingly.

The contention of the plaintiff's learned counsel that assessments so grossly excessive as those here in question,—six times as large as they ought to be,—are absolutely null, in that they are not the result of an exercise of judgment on the part of the assessors, as the law requires that an assessment should be, but merely of guess work or caprice.

94 We cannot adopt that view. Such as the assessments are, they are assessments. They were intended to be such, and are such in fact. They are not annulable in toto.

The judgment appealed from is therefore affirmed in all particulars except that it is annulled in so far as it reduces the assessment of the year 1906 on "credits, bills receivable, etc.," and it is now ordered, adjudged and decreed that the suits of the plaintiffs are dismissed with costs and ten per cent penalty on state taxes also as to said assessment of 1906; and that plaintiffs pay the costs of this appeal.

Monroe, J.—I dissent.

Breaux, C. J.—I dissent.

[Endorsed:] 17.713. Orient Ins. Co.

Petition for Rehearing.

Supreme Court of Louisiana.

No. 17713.

ORIENT INSURANCE COMPANY et al.

VS.

BOARD OF ASSESSORS et al.

To the Honorable the Judges of the Supreme Court of Louisiana:

The petition of the Orient Insurance Company and all others herein joined as Plaintiffs, with respect represents that Petitioners are advised and verily believe that there is error to their grave prejudice in the opinion and decree of the Court herein, and that the actions of the Assessors and the provisions of the revenue statutes as upheld by said opinion and decree are violative of and in contravention to the fourteenth amendment of the Constitution of the United States, and that, therefore, your Petitioners are justly entitled to have this Court again hear and reconsider this cause. And your Petitioners allege, among others, the following reasons in support of this application.

1. The Court errs in holding that the levying of a tax upon incorporeal things such as insurance premiums due on open account to a non-resident corporation does not violate the Fourteenth Amendment of the United States Constitution.

2. The Court errs in holding that a debt intangible in form can, independently of the domicile of the creditor, acquire a *situs* for the purpose of taxation. 203 U. S. 410-401.

3. The Court errs in holding that premiums due on open account to a non resident or foreign corporation are identical with open accounts due to such non resident but resulting from capital invested within the taxing state, the fact being that these foreign and non resident insurance companies have no capital or money invested in this State and that consequently, their premiums do not result from such capital their only capital being the reserve to guarantee losses, held at their foreign domicile. 205 U. S. 395, 175 U. S. 309, 191 U. S. 388, 177 U. S. 133, 122 La. 134, 121 La. 115-108.

4. The opinion states:

"The assessments are grossly excessive. So much so that it is manifest they were the result of mere guess work, as indeed is testified to by one member of the Board of Assessors.

More than this, The Board of Assessors was furnished by the Plaintiffs with a correct return for the years 1907 and 1908—

The contention of the Plaintiffs learned Counsel is that assessments so grossly excessive as those here in question—six times as large as they ought to be,—are absolutely null in that they are not the result of an exercise of judgment on the part of the Assessors, as this law requires that an assessment should be, but merely of guess work or caprice.

We cannot adopt that view. Such as is the assessments are, they are assessments. They were intended to be such, and are such in fact. They are not annulable in toto."

And this Court holds that because the statute provides that actions to test the correctness of such assessment must be filed before November of the year in which it was made, these plaintiffs in spite of a tacit understanding to await the decision of a pending test case, cannot be heard to test the correctness or nullity of these guess work, arbitrary and illegal assessments but are bound thereby.

Your petitioners aver that this Court errs in so holding and they aver that the action of the Assessors, as authorized by the Court and the enforcement of the statutory provisions aforesaid, is a taking of Petitioner's property without due process of law, in violation of the Fourteenth Amendment. 207 *United States* 140.

97 5. It is averred in the Petition, proven and admitted that Plaintiffs made due returns to the Assessors which were arbitrarily disregarded and that their applications to be heard by the Assessors in support of their sworn returns, were refused upon the ground that a test case was pending, and that until the legality of the tax had been determined by this Court, it would be a waste of time to consider the accuracy of the assessments and returns.

Petitioners aver that this Court errs in holding that such refusal was not, as alleged, a taking of Petitioner's property, without due process of law in violation of said Fourteenth Amendment. 207 *United States* 140.

6. The Court errs in holding that because of failure to file these suits prior to November of the year of each assessment, these Plaintiffs are precluded to claim the nullity or excessive character of the assessments complained of.

The statutory failure to make due returns is as imperative and attended by the same penalty as the failure to institute suit before November. And yet, this Court held in 122 *Louisiana* 129:

"The State may subject to the doom of the Assessor, a tax payer who has failed to furnish a list of his property to the Assessor as required by law, but not where the failure to make such returns was without fraudulent intent and from an honest belief founded upon reasonable grounds that what property he had was not taxable."

Petitioners aver that, in holding herein that they may not be heard to show their good faith in accordance with an understanding to await, before suing, the decision of a test case, and in holding that because of such delay in suing they are precluded from setting up in

Court, the refusal of the Assessors to hear them, and because
98 of such refusal, they are deprived of their property without judicial action and without due process of law in violation of said 14th Amendment. 207 *U. S.* 138.

Wherefore, your Petitioners pray that there be granted to them a rehearing of this cause with a delay of ten days to file briefs, and for all general and equitable relief.

Respectfully submitted.

(Signed)

HALL & MONROE, Att'ys.

(Endorsed:) No. 17713. Supreme Court of Louisiana. Orient Insurance Co. vs. Board of Assessors et al. Petition for Rehearing. Filed November 27. 1909 (Signed) John A. Klotz, Deputy Clerk.

Rehearing Refused.

(Extract from Minutes.)

NEW ORLEANS, MONDAY, *December 13th*, 1909.

The Court was duly opened, pursuant to adjournment. Present their Honors:—Joseph A. Breaux, Chief Justice; and Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land, Associate Justices.

By the Court.

No. 17713.

ORIENT INSURANCE COMPANY

vs.

BOARD OF ASSESSORS et als.

It is ordered that the rehearing applied for in this case be refused.

Statement of Taxes.

Supreme Court.

No. 17713.

ORIENT INSURANCE COMPANY

vs.

BOARD OF ASSESSORS et al.

Statement of Taxes, Penalties, etc., Due by Plaintiffs.

State.

| | | |
|----------------------------|------|-------------|
| Taxes, penalties etc. year | 1906 | \$29,995.91 |
| " " " " | 1907 | 2,433.22 |
| " " " " | 1908 | 376.80 |

Total now due..... \$5,805.93

Which sum bears penalties of two per cent per month.

I also submit estimate of City Taxes and penalties due for the Court's convenience.

| | |
|------|------------|
| 1906 | \$5,583.90 |
| 1907 | 6,595.21 |
| 1908 | 1,147.20 |

Total due City..... \$13,327.31

Which sum bears penalties of 10 per cent per annum.

Grand total of taxes etc., payment of which will be suspended by supersedeas \$19,133.24.

Respectfully,
(Signed)

HARRY P. SNEED,
Of Counsel for Defendants.

(Endorsed:) No. 17713. Supreme Court of Louisiana. Orient Ins. Co. vs. Board of Assessors, et als. Statement of Taxes. Filed Dec. 16, 1909. (Signed) Paul E. Mortimer, Clerk.

Petition for Writ of Error.

In the Supreme Court of the United States, October Term, 1909.

ORIENT INSURANCE COMPANY et al.

vs.

100 THE BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS et al.

Consolidated Cases.

To the Honorable the Chief Justice of the Supreme Court of the State of Louisiana:

The joint petition of the Agricultural Insurance Company of New York, Atlanta Home Insurance Company, Commercial Union Fire Insurance Co. of New York, Dixie Fire Insurance Company, Empire City Fire Insurance Co., Fireman's Insurance Company of Newark, Fireman's Fund Insurance Corporation, General Marine Insurance Company, Hanover Fire Insurance Company, London & Lancashire Fire Insurance Co., Metropolitan Casualty Company, Michigan Fire & Marine Insurance Co., New Amsterdam Casualty Company, North British & Mercantile Insurance Co., Ohio German Fire Insurance Company, Orient Insurance Company, Royal Insurance Company of England, Sea Insurance Company, Southern National Insurance Company, Svea Insurance Company, United Fireman's Insurance Company, United States Lloyd's Marine Insurance Co. Virginia State Insurance Company, herein represented by their respective Presidents or General Managers, to-wit: W. H. Stevens, Joel Hart, W. H. Wray, J. B. Blades, D. J. Burtis, D. H. Dunham, W. J. Dutton, R. E. Warfield, P. D. McNudine, M. W. O'Brien, E. G. Richards, M. Donnelly, A. G. McNudine, C. F. Shalloross, J. G. Hornberger, M. L. Duncan, R. B. Beach, W. H. Palmer and H. W. Eaton, respectfully shows:

That on the 15th day of November 1909, the Supreme Court of Louisiana, rendered against your Petitioners a judgment, (which by refusal of an application for a rehearing became final on the 13th day of December 1909), in a certain cause No. 17.713 of the docket of that Court, and wherein your Petitioners were plaintiffs and the Board of Assessors for the Parish of Orleans, the State Tax

Collector and the City of New Orleans, were Defendants, and
101 rejected your Petitioners' demand for the cancellation and annulment of alleged illegal assessments against them, in the

approximate aggregate sum of \$835,000.00, being assessed amount of premiums due, under open account, to your Petitioners by their Louisiana debtors for Fire Insurance policies issued to them from Petitioners' domiciles in foreign countries or states other than the State of Louisiana, and which assessments were, in fact, nearly ten times the amount of premiums actually out-standing and due, as shown by sworn returns duly made to the Board of Assessors, and

Petitioners aver that judgment was rendered, awarding execution against your Petitioners for 10% of the taxes involved as Attorney's fees and costs, as will appear by the records and proceedings in said cause;

Petitioners aver that the said Supreme Court of Louisiana is the highest court of the said State in which a decision of this sort could be had; and,

Your Petitioners claim the right to remove the said judgment to the Supreme Court of the United States by writ of error, under the Statutes of the United States, authorizing a writ of error to State Courts to-wit: Par. 709 R. S. Judiciary Act of March 3rd 1891; 26 Statute, 826 Chapter 517.

Because Petitioners in said suit aver:

That the levying of a tax upon incorporeal things such as insurance premiums due on open account to a nonresident corporation, violates the Fourteenth Amendment of the U. S. Constitution.

2. That a debt, intangible in form, cannot, independently of the domicile of the creditor acquire, a *situs* for the purpose of taxation.
206 U. S. 401-410.

3. That an open account, not resulting from capital invested within the taxing state but being a premium due on open account to a foreign or nonresident corporation or insurance company
102 having no capital invested in the taxing State, and whose only capital is its reserve at its own domicile, cannot be assessed and taxed at the domicile of the debtor without violating the Fourteenth Amendment of the United States Constitution. 205 U. S. 395, 175 U. S. 309, 191 U. S. 388, 177 U. S. 133, 122 La. 134, 121 La. 108, 115.

4. That the assessments herein complained of were grossly excessive, from six to ten times the amount of premiums out-standing, and were the result, as admitted by the Board of Assessors, and found by the Supreme Court, of mere guess work, arbitrary and capricious and were not the result, in any manner, of the exercise of judgment on the part of the Assessors, as the law requires.

That the Assessors refused to consider the sworn returns of the Petitioners as to the true amounts of the premiums, and that the said Board of Assessors and the Committee on the Revision of Assessments refused to give to Petitioners the hearing in the matter of the said assessments to which, under the specific terms of the Revenue Statutes, they were entitled, the reason assigned for this refusal being that there was pending, in the United States Supreme Court, a case to test the legality of this tax upon insurance premiums and that it would be a useless waste of time, in the meanwhile, to consider these applications.

That, acting on this refusal and the necessarily inferred understanding, these suits were not brought prior to the 1st of November of the years 1903 and 1907;

That notwithstanding that Petitioners acted in perfect good faith in the premises, the enforcement, under these circumstances, of the Statutory provision of the Revenue Law that relief could not be had because suit was not filed prior to the 1st of November 1903-1907, would be a taking of Petitioners' property without due process of law and in violation of the Fourteenth Amendment of the Constitution of the United States.

103 207 U. S. 140.

5. That to hold that Petitioners may not be heard to show their good faith, in accordance with an understanding to await, before suing, the decision of a test case and to hold that, because of such delay ensuing they are precluded from setting up, in court, the refusal of the Assessors to hear them, and because of such refusal, they are deprived of their property without judicial action and without due process of law, in violation of said Fourteenth Amendment,

207 U. S. 138.

All of which appears by the record of proceedings in this cause which is herewith submitted.

Petitioners aver that the Supreme Court of Louisiana in said cause, by a majority of one, decided otherwise, and in direct opposition to the decisions and jurisprudence on this subject of the Supreme Court of the United States, and against the Constitutional rights asserted as above.

Wherefore, your Petitioners pray the allowance of a writ of error returnable to the Supreme Court of the United States and for citation and supersedeas, and it will ever pray, etc.

(Signed)

HALL & MONROE,

Attorneys for Petitioners.

Harry H. Hall, being sworn, says that all of the petitioning Insurance Companies herein are foreign corporations, domiciled abroad or corporations created under the laws of other States than the State of Louisiana, and therein domiciled; that neither the Presidents of the said Corporations nor any of the officers are present in the State of Louisiana and within the jurisdiction of this Court, and that affiant's said firm is authorized to sign and has signed this petition as Attorneys in fact for the said absent and nonresident petitioning Corporations.

(Signed)

HARRY H. HALL.

104 Sworn to and subscribed to before me, this 16th day of December, 1909.

[SEAL.]

(Signed)

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

(Endorsed) No. —. U. S. Supreme Court. Orient Insurance Company et al. vs. The Board of Assessors for the Parish of Orleans, et al. Petition for writ of error. Filed Dec. 17, 1909. (Signed) Paul E. Mortimer, Clerk.

Order.

Let a writ of error operating as a supersedeas be granted unto the Orient Insurance Company et als., the petitioners herein, to the Honorable the Supreme Court of the United States upon their giving bond, with good and solvent security, and conditioned according to law, in the sum of forty thousand dollars.

New Orleans, December 17th, 1909.

(Signed)

JOS. A. BREAUX,

Chief Justice of the Supreme Court of Louisiana.

Assignment of Error.

In the Supreme Court of the United States, October Term, in the Year of Our Lord 1909.

Consolidated Cases.

ORIENT INSURANCE COMPANY et al.

vs.

THE BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS et al.

Afterwards, to-wit: on the first Monday of — in said term before the Justices of the Supreme Court of the United States, at the Capital in the City of Washington, D. C., come the said Orient Insurance Company and other Plaintiffs and Petitioners hereinafter named by Hall & Monroe their Attorneys, and say that in the record and proceedings aforesaid, *their* is manifest error in the opinion and decree of the Louisiana Supreme Court, in this to-wit:

1. The Court erred in holding that the levying of a tax on incorporeal things, such as insurance premiums due on open account to a nonresident corporation, does not violate the Fourteenth Amendment of the United States Constitution.

2. The Court erred in holding that a debt, intangible in form, can, independently of the domicile of the creditor acquire a situs for the purpose of taxation. 205 U. S. 401-410.

3. The Court erred in holding that premiums due on open account to a nonresident or foreign corporation are identical with open accounts due such nonresident but resulting from capital invested within the taxing state, the fact being that such foreign and nonresident insurance companies have no capital or money invested in this State, and that, consequently the premiums due do not result from such capital, the only capital being the reserve held at the foreign domicile to guarantee losses.

205 U. S. 395, 175 U. S. 309, 191 U. S. 388, 177 U. S. 183.

122 La. 134, 121 La. 108-115.

4. The opinion states:

"The assessments are grossly excessive, so much so, that it is manifest that they were the result of mere guess work as, indeed, is testified to by one member of the Board of Assessors.

More than this, the Board of Assessors was furnished by the Plaintiff with a correct return for the years 1907 and 1908—the contention of the Plaintiff's learned counsel is that assessments so grossly excessive as those herein questioned—six times as large as they ought to be—are absolutely null in that they are not the result of the exercise of judgment on the part of the Assessors, as the law requires that an assessment should be, but merely of guess work and caprice.

We cannot adopt that view. Such as the assessments are, they are assessments, they were intended to be such and are such in fact. They are not annulable *in toto*.

Further, the Supreme Court held that because the Supreme Court provides that actions to test the correctness of such assessment must be filed before November of the year in which it was made, these Plaintiffs, in spite of a tacit understanding to await the decision of a pending test case, could not be heard to test the nullity of these guess work, arbitrary and illegal assessments, but were bound thereby and that said Louisiana Supreme Court erred in so holding, and that the action of the Assessors as authorized by the Court and the enforcement of such illegal assessments and of the Statutory provisions aforesaid, is a taking of Petitioners' property without due process of law in violation of the Fourteenth Amendment of the Constitution.

207 *United States*, 140-5.

5. It is averred in the petition, proven and admitted, that the Plaintiffs made due return to the Assessors, which were arbitrarily disregarded and their applications to be heard by the Assessors, in spite of the sworn returns, were refused, upon the ground that a test case was pending and that, until the legality of the tax had been determined by this Court, it would be a waste of time to consider the accuracy of the assessments and returns, and the Louisiana Supreme Court erred in holding that such refusal was not, as alleged, a taking of Petitioners' property without due process of law, in violation of the Fourteenth Amendment. 207 *United States* 140.

6. The Louisiana Supreme Court erred in holding that because of the failure to file these suits prior to the 1st of November 1906 and 1907 Petitioners were precluded to claim the nullity or excessive character of the assessments complained of, the statutory penalty as to failure to institute suit before November being no more imperative than the Statutory failure to make due returns.

And the said Court erred in holding that Petitioners could not be heard to show their good faith in accordance with an understanding to await, before suing, the decision of a test case, and in holding that because of such delay in suing, they were precluded from setting up in Court, the refusal of the Assessors to hear them, and because of such refusal, they are deprived of their property without judicial action

and without due process of law, in violation of the Fourteenth Amendment. 207 U. S. 138, 122 La. 129.

And the said Orient Insurance Company and other Plaintiff Insurance Companies pray that the judgment and decree of the said Supreme Court of Louisiana may be reversed, annulled and altogether held for naught, and that they may be restored to all things which they have lost by occasion of the said judgment.

(Signed)

HALL & MONROE,

(Signed)

HARRY H. HALL,

Attorneys for Plaintiffs in Error.

AGRICULTURAL INSURANCE CO.

ATLANTA HOME INSURANCE CO.

COMMERCIAL UNION FIRE INSURANCE CO.

DIXIE FIRE INSURANCE CO.

EMPIRE CITY FIRE INS. CO.

FIREMEN'S FUND INSURANCE CO.

FIREMEN'S INSURANCE CO.

GENERAL MARINE INS. CO.

HANOVER FIRE INS. CO.

LONDON & LANCASHIRE INS. CO.

METROPOLITAN CASUALTY INS. CO.

MICHIGAN FIRE & MARINE INS. CO.

NEW AMSTERDAM CASUALTY INS. CO.

NORTH BRITISH & MERCANTILE INS. CO.

OHIO GERMAN FIRE INS. CO.

ORIENT FIRE INS. CO.

ROYAL INSURANCE CO.

SEA INSURANCE CO.

SVEA INSURANCE CO.

SOUTHERN NATIONAL INS. CO.

UNITED FIREMAN'S INSURANCE.

UNITED STATES LLOYD'S.

VIRGINIA STATE INS. CO.

(Endorsed:) No. —. United States Supreme Court. Orient Insurance Co. et al. vs. The Board of Assessors for the Parish of Orleans et al. Assignment of Error. Filed Dec. 17th, 1909. (Signed) Paul E. Mortimer, Clerk.

109 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of Louisiana before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Orient Insurance Company and joined Plaintiffs,

to-wit: the following named Insurance Companies: Agricultural of New York, Atlanta Home, Commercial Union, Dixie, Empire City, Firemen of Newark, Firemen's Fund, General Marine, Hanover, London & Lancashire, Metropolitan Casualty Michigan Fire & Marine, New Amsterdam Casualty, North British Mercantile Ohio German, Royal of England, Sea, Southern National, Svea, United Fireman's, U. S. Lloyd's Marine, Virginia State, Plaintiff- and Board of Assessors for the Parish of Orleans State Tax Collector and City of New Orleans Defendants In consolidated case No. 17713 of the docket of the said Supreme Court of Louisiana, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or

wherein was drawn in question the construction of the clause
 110 of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Orient Insurance Company and its co-plaintiffs aforesaid as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 17th day of December, in the year of our Lord one thousand nine hundred and nine.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

H. J. CARTER,

*Clerk of the Circuit Court of the United States
for the Eastern District of Louisiana.*

Allowed *by* to operate as supersedeas upon giving bond in the sum of Forty thousand dollars

By JOS. A. BREAUX,

Chief Justice Supreme Court of Louisiana.

[Endorsed:] No. 17713. Orient Ins. Co. Plaintiffs-in-error versus Board of Assessors Defendant-in-error. Writ of Error. Filed Dec. 17, 1909. Paul E. Mortimer Clerk.

Copy of Writ of Error.

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of Louisiana before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Orient Insurance Company and joined Plaintiffs, towit: the following named Insurance Companies; Agricultural of New York, Atlanta Home, Commercial Union, Dixie, Empire City, Firemen of Newark, Firemen's Fund, General Marine, Hanover, London & Lancashire, Metropolitan Casualty, Michigan Fire & Marine, New Amsterdam Casualty, North British Mercantile, Ohio German, Royal of England, Sea, Southern National, Svea, United Fireman's U. S. Lloyd's Marine, Virginia State, Plaintiffs, and Board of Assessors for the Parish of Orleans State Tax Collector and City of New Orleans Defendants In consolidated cases No. 17,713 of the docket of the said Supreme Court of Louisiana, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the clause of the

112 Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Orient Insurance Company and its co-plaintiffs aforesaid as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witne-s the honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 17th day of December, in the year of our Lord one thousand nine hundred and nine.

[SEAL.]

(Signed)

H. J. CARTER,

*Clerk of the Circuit Court of the United States
for the Eastern District of Louisiana.*

Allowed to operate as supersedeas upon giving bond in the sum of Forty Thousand Dollars

By (Signed) JOS. A. BREAU,

Chief Justice Supreme Court of Louisiana.

(Endorsed:) No. 17,713. Supreme Court of Louisiana. Orient Ins. Co. and others Plaintiffs in error Versus (Writ of Error) Board of Assessors and others Defendants-in error. Copy of a writ of Error

lodged in the Clerk's Office of the Supreme Court of the State 113 of Louisiana, in pursuance of the stature in such cases made and provided, this 17th day of December one thousand nine hundred and nine. (Signed) Hall & Monroe, Attorneys of Plaintiffs in Error. Filed December 17th, 1909. (Signed) Paul E. Mortimer, Clerk.

Bond for Writ of Error.

Know all men by these presents, That we Orient Insurance Co. Agricultural Ins. Co., Atlanta Homs Ins. Co., Commercial Union Fire Ins. Co., Dixie Fire Ins. Co., Empire City Fire Ins. Co., Firemen's Fund Insurance Co., Firemen's Ins. Co., General Marine Ins. Co., Hanover Fire Ins. Co., London & Lancashire Ins. Co., Metropolitan Casualty Ins. Co., Michigan Fire & Marine Ins. Co., New Amsterdam Casualty Ins. Co., North British & Mercantile Ins. Co., Orient Insurance Co., Royal Ins. Co. Ltd., Sea Insurance Co., Svea Ins. Co. United Firemen's Ins. Co., United States Lloyds, Virginia State Ins. Co., as principals and American Surety Co. of N. Y. as sureties, are held and firmly bound unto the City of New Orleans, Board of Assessors for Parish of Orleans and John Fitzpatrick, State Tax Collector in the full and just sum of Forty Thousand Dollars to be paid to the said City of New Orleans, Board of Assessors and State Tax Collector, their successors certain attorneys, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 17th day of December, in the year of our Lord, one thousand nine hundred and nine.

Whereas, lately at a Session of the Supreme Court of Louisiana holding sessions in and for the City of New Orleans, State of Louisiana, in a suit depending in said Court, between Orient Insurance Company and others named above as plaintiffs and City of New Orleans, Board of Assessors, and State Tax Collector aforesaid as defendants, No. 17,713 of this Docket a final judgment and 113½ decree was rendered against the said plaintiffs and the said plaintiffs, Orient Insurance Company and other plaintiffs aforesaid having obtained a writ of Error to the Supreme Court of the United States, and filed a copy thereof in the Clerk's office of the said Court to reverse the judgment and decree in the aforesaid suit, and a citation directed to the said City of New Orleans, Board of Assessors and State Tax Collector aforesaid citing and admonishing them to be and appear before the United States Supreme Court to be holden at Washington, D. C. within thirty (30) days from the date thereof.

Now, the condition of the above obligation is such, that if the said Orient Insurance Company and other plaintiffs above named shall prosecute said Writ of Error to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) HALL & MONROE,
HARRY H. HALL, *Att'ys*,

For Orient Insurance Company, Agricultural Ins. Co., Atlanta Home Ins. Co., Commercial Union Fire Ins. Co., Dixie Fire Ins. Co., Empire City Fire Ins. Co., Firemen's Fund Ins. Co., Firemen's Ins. Co., General Marine Ins. Co., Hanover Fire Ins. Co., London & Lancashire Ins. Co., Metropolitan Casualty Ins. Co., Michigan Fire & Marine Ins. Co., New Amsterdam Casualty Ins. Co., North British & Mercantile Ins. Co., German Fire Ins. Co., Orient Ins. Co., Royal Ins. Co., Ltd., Sea Insurance Co., Svea Ins. Co., United Firemen's Ins. Co., United States Lloyds, Virginia State Ins. Co.

(Signed) HARRY H. HALL,
HALL & MONROE, *Att'ys*.
AMERICAN SURETY CO. OF NEW YORK,

(Signed) By W. R. IRBY, *Res. Vice-President*.

Attest,

(Signed) PETER F. PESCUDE,
Res. Assistant Secretary. [SEAL.]

Sealed and delivered in the presence of—
— — —

Approved by
[SEAL.] (Signed) JOS. A. BREAUX,
Chief Justice.

114 (Endorsed:) No. 17,713—Supreme Court of Louisiana—
Orient Insurance Company et als. vs. The Board of Assessors
for the Parish of Orleans, et als. Bond. Filed December 17th,
1909—(Signed) Paul E. Mortimer, Clerk.

115 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that the foregoing one hundred and Fourteenth pages contain a full, true and complete copy of the pro-

ceedings had in the Civil District Court for the parish of Orleans, in a certain suit wherein Orient Insurance Company and others were plaintiffs and Board of Assessors and others, were defendants; and, also, of all the proceedings had in this Supreme Court on the appeal taken by said plaintiffs, which appeal is now on the files thereof, under No. 17,713.

In testimony whereof I have hereunto set my hand, and affixed the seal of said Court at the city of New Orleans, this 23rd day of December, Anno Domini, one thousand nine hundred and nine, and of the Independence of the United States of America, the one hundred and thirty-fourth.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER, *Clerk.*

116

Certificate of the Chief Justice.

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Joseph A. Breaux, Chief Justice of the Supreme Court of the State of Louisiana, do hereby certify that Paul E. Mortimer, is Clerk of the Supreme Court of the State of Louisiana; that the signature of Paul E. Mortimer, to the foregoing certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof, I have hereunto set my hand and seal, at the city of New Orleans, this the 23rd day of December A. D. one thousand nine hundred and nine.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAU, X
Chief Justice.

117 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Board of Assessors for Parish of Orleans, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, D. C., within 30 days from date hereof, pursuant to a writ of error filed in the Clerk's Office of the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana, wherein Orient Insurance Co. Atlanta Home Ins. Co.; Commercial Union Fire Ins. Co.; Dixie Fire Insurance Co.; Empire City Fire Ins. Co.; Firemen's Fund Ins. Co.; Firemen's Ins. Co. of Newark;

General Marine Ins. Co.; Hanover Fire Ins. Co.; London Lancashire Ins. Co.; Metropolitan Casualty Ins. Co.; Michigan Fire & Marine Ins. Co.; New Amsterdam Casualty Ins. Co.; North British Mercantile Ins. Co.; Ohio German Fire Ins. Co.; Agricultural Ins. Co.; Royal Ins. Co., Ltd. Sea Ins. Co. Limited; Svea Ins. Co.; Southern Nat'l Ins. Co.; United Firemen Insurance Company; United States Lloyd; Virginia State Ins. Co., are plaintiffs and Board of Assessors for Parish of Orleans, City of New Orleans and John Fitzpatrick, State Tax Collector are defendants to show cause, if any there be, why the judgment rendered against the said plaintiffs as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 17th day of December, in the year of our Lord one thousand nine hundred and nine.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
Chief Justice.

118 [Endorsed:] Ser. on C. T. Gauche 12/21. Chaillot. No. 17,713. Supreme Court of Louisiana. Orient Insurance Company et als. vs. Board of Assessors et als. Citation of Appeal. Filed Dec. 24, 1909. Paul E. Mortimer, Clerk. R.

Marshal's Return.

Received for return Tuesday, Dec. 21, 1909, and on the 21st day of December 1909 I served a copy of the within Citation of Appeal on Board of Assessors defendant herein named by personal service on C. Taylor Gauche its President.

Returned same day.
Sheriff's fees, —.

E. E. CHAILLOT,
*Deputy Civil Sheriff of Orleans Parish,
State of Louisiana.*

Ernest Edward Chaillot Deputy Civil Sheriff for the Parish of Orleans State of Louisiana being sworn deposeth and says that he made a personal service on C. Taylor Gauche President of the Board of Assessors for the Parish of Orleans.

E. E. CHAILLOT.

Sworn to and subscribed before me this the 24th day of December 1909.

[Seal Supreme Court of the State of Louisiana.]

JOHN A. KLOTZ,
Deputy Clerk.

119 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to City of New Orleans, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, D. C., within 30 days from date hereof, pursuant to a writ of error filed in the Clerk's Office of the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana, wherein Orient Insurance Co. Atlanta Home Ins. Co.; Commercial Union Fire Ins. Co.; Dixie Fire Insurance Co.; Empire City Fire Ins. Co.; Firemen's Fund Ins. Co.; Firemen's Ins. Co. of Newark; General Marine Ins. Co.; Hanover Fire Ins. Co.; London Lancashire Ins. Co.; Metropolitan Casualty Ins. Co.; Michigan Fire & Marine Ins. Co.; New Amsterdam Casualty Ins. Co.; North British Mercantile Ins. Co.; Ohio German Fire Ins. Co.; Agricultural Ins. Co.; Royal Ins. Co., Ltd. Sea Ins. Co. Limited; Svea Ins. Co.; Southern Nat'l Ins. Co.; United Firemen Insurance Company; United States Lloyd; Virginia State Ins. Co., are plaintiffs and Board of Assessors for parish of Orleans, City of New Orleans and John Fitzpatrick, State Tax Collector are defendants to show cause, if any there be, why the judgment rendered against the said plaintiffs as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 17th day of December in the year of our Lord one thousand nine hundred and nine.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAU, X
Chief Justice.

120 [Endorsed:] Ser. on M. Behrman 12/21 Chaillot. R. Supreme Court of Louisiana. No. 17,713. Orient Insurance Co. et als. vs. Board of Assessors et als. Citation of appeal. Filed Dec. 24, 1909. Paul E. Mortimer, Clerk.

Return.

Received for return Tuesday Dec. 21, 1909, and on the 21st day of December, 1909, I served a copy of the within Citation of Appeal on City of New Orleans defendant herein named by personal service on Martin Behrman its Mayor.

Returned same day.

Sheriff's fees, —.

E. E. CHAILLOT,
Deputy Civil Sheriff of Orleans Parish,
State of Louisiana.

Ernest Edward Chaillot Deputy Civil Sheriff for the Parish of Orleans State of Louisiana being sworn, deposes and says that he

made a personal service of the within citation on Martin Behrman Mayor of the City of New Orleans.

E. E. CHAILLOT.

Sworn to and subscribed before me this the 24th day of December 1909.

[Seal Supreme Court of the State of Louisiana.]

JOHN A. KLOTZ,
Deputy Clerk.

121 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to John Fitzpatrick, State Tax Collector, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, D. C., within 30 days from date hereof, pursuant to a writ of error filed in the Clerk's Office of the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana, wherein Orient Insurance Co. Atlanta Home Ins. Co.; Commercial Union Fire Ins. Co.; Dixie Fire Insurance Co.; Empire City Fire Ins. Co.; Firemen's Fund Ins. Co.; Firemen's Ins. Co. of Newark; General Marine Ins. Co.; Hanover Fire Ins. Co.; London Lancashire Ins. Co.; Metropolitan Casualty Ins. Co.; Michigan Fire & Marine Ins. Co.; New Amsterdam Casualty Ins. Co.; North British Mercantile Ins. Co.; Ohio German Fire Ins. Co.; Agricultural Ins. Co.; Royal Ins. Co., Ltd. Sea Ins. Co. Limited; Svea Ins. Co.; Southern Nat'l Ins. Co.; United Firemen Insurance Company; United States Lloyd; Virginia State Ins. Co., are plaintiffs and Board of Assessors for parish of Orleans, City of New Orleans and John Fitzpatrick, State Tax Collector are defendants to show cause, if any there be, why the judgment rendered against the said plaintiffs as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 17th day of December in the year of our Lord one thousand nine hundred and nine.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
Chief Justice.

122 [Endorsed:] Ser. on J. Fitzpatrick 12/21 Chaillot. R. Supreme Court of Louisiana. No. 17,713. Orient Insurance Co. et als. vs. Board of Assessors et als. Citation of Appeal. Filed Dec. 24, 1909. Paul E. Mortimer, Clerk.

Marshal's Return.

Received for return Tuesday, Dec. 21, 1909, and on the 21st day of December 1909, I served a copy of the within Citation of Appeal on John Fitzpatrick State Tax Collector for the Parish of Orleans defendant herein named in person.

Returned same day.

Sheriff's fees, —.

E. E. CHAILLOT,
*Deputy Civil Sheriff of Orleans Parish,
State of Louisiana.*

Ernest Edward Chaillot Deputy Civil Sheriff for the Parish of Orleans State of Louisiana being sworn, deposeth and says that he made a personal service on John Fitzpatrick State Tax Collector for the Parish of Orleans.

E. E. CHAILLOT.

Sworn to and subscribed before me this the 24th day of December 1909.

[Seal Supreme Court of the State of Louisiana.]

JOHN A. KLOTZ,
Deputy Clerk.

Endorsed on cover: File No. 21,949, Louisiana Supreme Court. Term No. 723. Orient Insurance Company et al., plaintiffs in error, vs. The Board of Assessors for the Parish of Orleans, The City of New Orleans, and John Fitzpatrick, State Tax Collector. Filed December 31st, 1909. File No. 21,949.

Office Supreme Court, U. S.
FILED.

JAN 3 1910

JAMES H. McKENNEY,
CLERK.

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 82.

LIVERPOOL & LONDON & GLOBE INSURANCE CO.
ET AL.

vs.

BOARD OF ASSESSORS OF THE PARISH OF
ORLEANS ET AL.

MOTION TO ADVANCE.

On motion of John Fitzpatrick, State Tax Collector, herein represented by his counsel, and on suggesting that in the above-entitled cause the execution of the revenue laws of the State are stayed; and on further suggesting that the right of the State of Louisiana and the Board of Assessors for the Parish of Orleans and the City of New Orleans to assess and collect taxes upon premiums due under open account to foreign and non-resident insurance companies by

residents of the State of Louisiana is involved in the above cause as well as in the recent cause of the Orient Insurance Co. *et al.* vs. The Board of Assessors *et al.*, and that by these suits the collection of taxes upon all such premiums is stayed, and that the fiscal interests of the State require a speedy determination of the issue herein involved, and,

On further suggesting the consent of all other counsel in the case,

It is ordered that this cause be advanced upon the docket to as early a day as may be consistent with the business of the court.

F. C. ZACHARIE,
Attorney for John Fitzpatrick,
State Tax Collector.

We hereby consent to this application.

H. G. DUPRE,
Attorney for City of New Orleans.

GEO. H. TERRIBERRY,
Attorney for Board of Assessors.

HALL & MONROE,
Attorneys for Plaintiffs.

[Endorsed:] File No. 21,398. Supreme Court U. S., October term, 1909. Term No. 282. Liverpool & London & Globe Ins. Co. of New York, plaintiff in error, vs. The Board of Assessors of the Parish of Orleans *et al.* Motion to advance with consent. Filed January 3, 1910.

Office Supreme Court, U. S.
FILED.

JAN 3 1910

JAMES H. McKENNEY,
Clk.

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 282. 377

ORIENT INSURANCE COMPANY ET AL., PLAINTIFFS
IN ERROR,

vs.

BOARD OF ASSESSORS OF THE PARISH OF
ORLEANS ET AL.

**MOTION TO ADVANCE TO BE HEARD WITH
No. 282 AS ONE CASE.**

On motion of John Fitzpatrick, State Tax Collector, herein represented by his counsel, and on suggesting that in the above-entitled cause the execution of the revenue laws of the State are stayed, and

On further suggesting that the right of the State of Louisiana and the Board of Assessors for the Parish of Orleans and the City of New Orleans to assess and collect taxes upon premiums due, under open account, to foreign and non-resident insurance companies by residents of the State of Louisiana is involved in the above cause as well as

in the recent cause of The Liverpool & London & Globe Insurance Co. *et al. vs.* The Board of Assessors *et al.*, and that by these suits the collection of taxes upon all such premiums is stayed, and that the fiscal interests of the State require a speedy determination of the issues herein involved, and

On further suggesting the consent of all other counsel in the case,

It is ordered that this cause be advanced upon the docket, and that, inasmuch as the same questions involved in the Liverpool & London & Globe Insurance case, No. 282, are involved in this case, said suit may be advanced to the same day assigned for the hearing of the Liverpool & London & Globe Insurance Co. case, and that the two causes may be heard together and may be argued as one cause.

F. C. ZACHARIE,

*Attorney for John Fitzpatrick,
State Tax Collector.*

We consent to this application.

GEO. H. TERRIBERRY,

Attorney for Board of Assessors.

H. G. DUPRE,

Attorney for City of New Orleans.

HALL & MONROE,

Attorneys for Plaintiffs.

[Endorsed:] File No. 21,949. Supreme Court U. S., October term, 1909. Term No. 723. Orient Insurance Co. *et al.*, plaintiffs in error, *vs.* The Board of Assessors of the Parish of Orleans *et al.* Motion to advance to be heard with No. 282 as one case, with consent. Filed January 3, 1910.

Supreme Court of the United States

OCTOBER TERM, 1910.

No. 92.

LIVERPOOL AND LONDON AND GLOBE INSURANCE
COMPANY OF NEW YORK,
Plaintiff in Error,

versus

THE BOARD OF ASSESSORS FOR THE PARISH OF
ORLEANS, THE CITY OF NEW ORLEANS
AND THE STATE TAX COLLECTOR
FOR THE FIRST DISTRICT
OF THE CITY OF NEW
ORLEANS.

No. 397.

ORIENT INSURANCE COMPANY ET AL.,
Plaintiffs in Error,

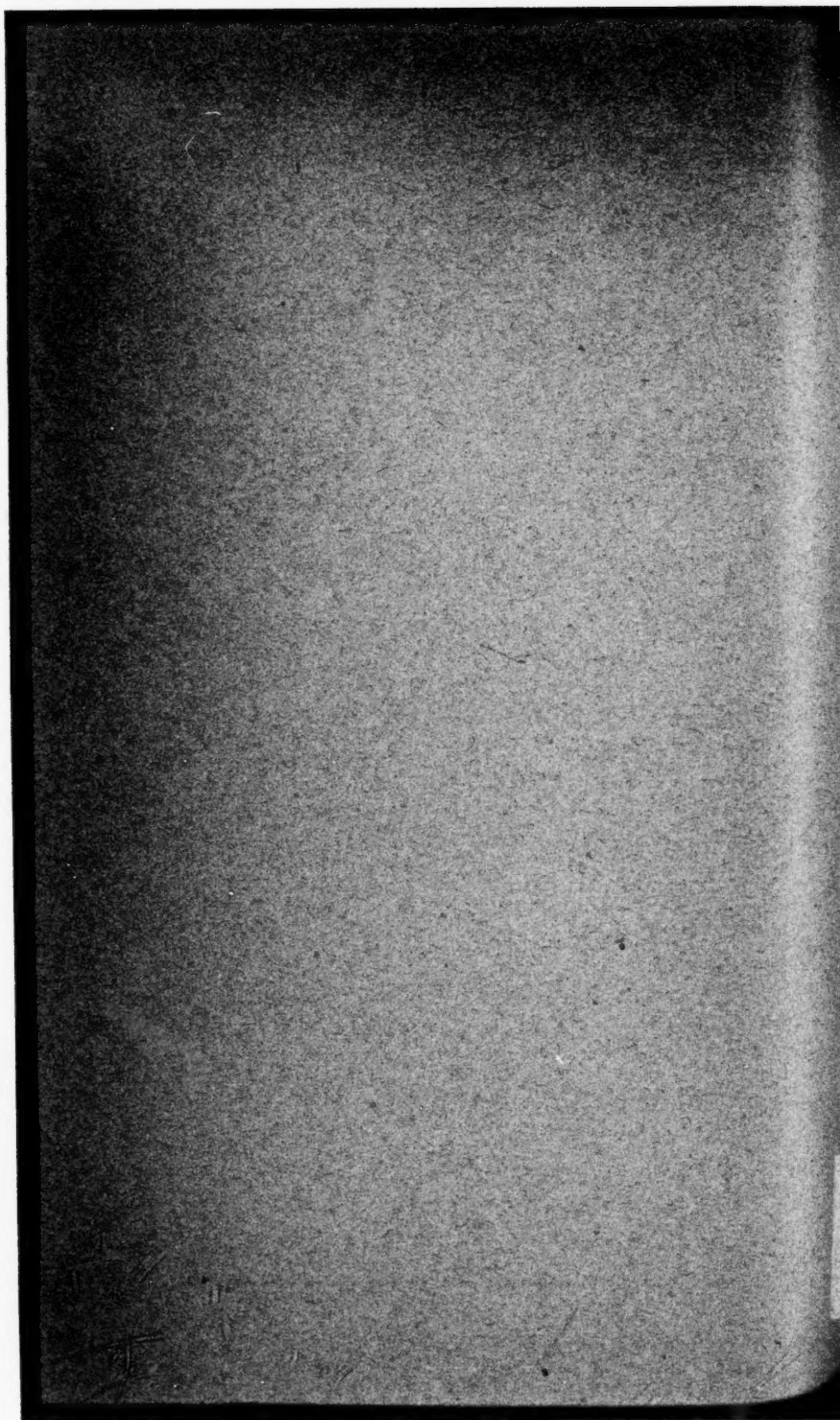
versus

THE BOARD OF ASSESSORS FOR THE PARISH OF
ORLEANS, THE CITY OF NEW ORLEANS
AND JOHN FITZPATRICK, STATE
TAX COLLECTOR.

Cases Consolidated Under the No. 92.

BRIEF FOR PLAINTIFFS IN ERROR.

HARRY H. HALL,
J. BLANC MONROE,
Attorneys and Counsel for Plaintiffs in Error.



Supreme Court of the United States.

OCTOBER TERM, 1910.

No. 92.

LIVERPOOL AND LONDON AND GLOBE INSURANCE
COMPANY OF NEW YORK,

Plaintiff in Error,

versus

THE BOARD OF ASSESSORS FOR THE PARISH OF
ORLEANS, THE CITY OF NEW ORLEANS
AND THE STATE TAX COLLECTOR
FOR THE FIRST DISTRICT
OF THE CITY OF NEW
ORLEANS.

No. 397.

ORIENT INSURANCE COMPANY *ET AL.*,

Plaintiffs in Error,

versus

THE BOARD OF ASSESSORS FOR THE PARISH OF
ORLEANS, THE CITY OF NEW ORLEANS,
AND JOHN FITZPATRICK, STATE
TAX COLLECTOR.

Cases Consolidated Under the No. 92.

BRIEF FOR PLAINTIFFS IN ERROR.

ARGUMENT FOR PLAINTIFF IN ERROR.

I AND II.

A State cannot legally impose an assessment and tax upon premiums due under open account by local policyholders to nonresident or foreign insurance companies. Such assessment and tax would be a taking of property

without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States.

St. Louis vs. Ferry Co., 11 Wall. 429; **Louisville, etc., vs. Ky.**, 188 U. S. 385, 398; **State Tax on Foreign-Held Bonds**, 15 Wall. 300; **Kirtland vs. Hotchkiss**, 100 U. S. 491; **U. S. vs. Erie**, 106 U. S. 327; **Hagan vs. Reclamation**, 111 U. S. 701; **Pullman Palace Car Co. vs. Pennsylvania**, 141 U. S. 18; **Erie R. R. vs. Pa.**, 153 U. S. 628; **Savings Society vs. Multinomah**, 169 U. S. 421; **Dewey vs. Des Moines**, 173 U. S. 193; **N. O. vs. Stempel**, 175 U. S. 309; **Bristol vs. Washington County**, 177 U. S. 133; **Blackstone vs. Miller**, 188 U. S. 189; **Board of Assessors vs. Comptoir National d'Escompte de Paris**, 191 U. S. 388; **Metropolitan Life vs. City of New Orleans**, 205 U. S. 395; **Buck vs. Beach**, 206 U. S. 407; **Barber Asphalt Co. vs. City**, 41 La. An. 1015; **L. & L. & G. Ins. Co. vs. Assessors**, 44 La. An. 760; **Railey vs. Assessors**, 44 La. An. 766; **Clason vs. City**, 46 La. An. 1; **State ex rel. vs. Assessors**, 47 La. An. 1545; **Bluefields Banana Co. vs. Assessors**, 49 La. An. 43; **Parker vs. Strouse**, 49 La. An. 1173; **L. & L. & G. Ins. Co. vs. Assessors**, 51 La. An. 1028; **Comptoir National d'Escompte vs. Assessors**, 52 La. An. 1319; **Williams vs. Triche**, 107 La. 92; **Monongahela vs. Assessors**, 115 La. 566; **Metropolitan Life vs. Assessors**, 115 La. 698.

III.

A plain distinction can be drawn between a premium due on open account to a nonresident, or foreign, insurance corporation, by a local policy-holder, on the one hand, and on the other, an open account resulting from the sale of merchandise to a local purchaser from a local stock of goods belonging to a nonresident owner.

General Electric Co. vs. Assessors, 121 La. 116.

IV.

Assessments admittedly the result of mere **guesswork**, and so excessive as to exceed from ten to one hundred times the admitted value of the thing assessed, are absolute nullities.

A. & E. E. of Law, Vol. 27, pp. 660, 663, 665, 667, 690; 26 La. An. 694; 30 La. An. 261; 40 La. An. 371; 42 La. An. 374; 130 U. S. 177; Cooley on Taxation, 2d Ed., p. 2; Merchants' Ins. Co. vs. Board of Assessors, 40 La. An. 372; Natalbany Lumber Co. vs. Assessors, 123 La. 174; Union Oil Co. vs. Campbell, 48 La. An. 1350; Waggoner vs. Maumus, 112 La. 232; Swift vs. Assessors, 115 La. 321.

V.

The denial by the assessors of the statutory right of the owners to be heard, renders the assessment null, and

would amount to a taking of petitioner's property without due process of law.

Louisiana Acts, 1898, p. 360; Acts of 1906, p. 96; Cooley on Taxation, 2d Ed., 361; A. & E. E. of Law, Vol. 27, pp. 660, 704; 21 Fed. Rep. 99; 111 U. S. 708; 49 La. An. 1350; Johnson vs. Tax Collector, 39 La. An. 538; Shattuck vs. N. O., 39 La. An. 209; Cooley on Taxation, Vol. 2, pp. 362, 363.

And the assessors have no right arbitrarily to refuse to believe the evidence of the taxpayers.

Desty on Taxation, Vol. 1, p. 543.

VI.

The decision of the Louisiana Supreme Court, to the effect that the failure to file these suits prior to the 1st of November, 1905-1907, prevented Plaintiffs in Error from averring the nullity or excessive character of the assessments complained of, would amount to a deprivation of Plaintiff's property, without judicial action and without due process of law.

**Central of Ga. vs. Wright, 207 U. S. 138;
Traveler's vs. Assessors, 122 La. 129-136.**

VII.

Apart from this consideration, the statutory limitation referred to does not apply to suits which contest the validity and legality of the tax.

Oteri vs. Parker, 42 An. 374; R. R. vs. Sheriff, 50 An. 737.

STATEMENT OF CASE.

These suits were instituted to cancel and annul the assessment and attempted taxation by the State of Louisiana and the City of New Orleans of insurance premiums due under open account by Louisiana policy-holders to foreign and nonresident insurance companies.

Prior to 1889, no attempt had ever been made to assess and tax in Louisiana **open accounts** due by a local debtor to a foreign or nonresident creditor. When the attempt was made, in that year, the Louisiana Supreme Court held that such open accounts, when treated as property for the purposes of taxation, could only be assessed at the domicile or place of residence of the creditor, without regard to the domicile of the debtor, and that debts due to a foreign corporation by residents of Louisiana could not be taxed in that State.

**Barber Asphalt and Paving Co. vs. City of
New Orleans et al., 41 La. An. 1015.**

In 1892 the Louisiana Supreme Court reiterated this doctrine, holding:

"The mere right of a foreign creditor to receive from his debtor within this State the payment of his demand cannot be subjected to taxation within the State."

**Liverpool & London & Globe Insurance Com-
pany vs. Board of Assessors, 44 La. An.
764.**

Again, in 1892, the same Court held that

“debts due to a foreign corporation by residents of this State cannot be taxed in this State.”

Bailey vs. Assessors, 44 La. An. 768.

In 1899 the same Court again decided that premiums due by a Louisiana policy-holder to a nonresident insurance company could not be taxed in that State.

Liverpool & London & Globe Insurance Company vs. Board of Assessors et al., 51 La. An. 1028.

The taxing authorities finally acquiesced in these decisions, and no further attempt was made to assess premiums due under open account to foreign insurance companies, until 1906, when, without any change in the revenue laws; without notice, and without inquiry and investigation of any kind, the Board of Assessors placed upon the assessment rolls for that year, against all the foreign and non-resident insurance companies alleged assessments, admittedly arbitrary, and made by **guesswork**, all in the form following, amounts only varying:

“Money loaned on interest; all credits and bills receivable for money loaned on interest, or advanced, or for goods sold.” (Tr., p. 3.)

The amounts of these so-called assessments were reached by the Assessors taking from the report of the Secretary of State the sum-total of all the gross premiums received by each insurance company during the entire year, and assuming, as outstanding and uncollected at the end of the year, one-half of the gross annual premiums, al-

though the president of the board admitted that he knew, and that it was notorious, that a credit of thirty days only was customarily given; so that, at the end of the year, only one-twelfth of the annual premiums would be uncollected. (Tr., p. 12.)

In the **Liverpool case**, its uncollected premiums at the end of the year were arbitrarily assessed at \$112,000, and, although the exact amount was proven to have been \$1,500 (Tr., p. 13), the assessment of \$112,000—"guesswork"—was declared to stand as a valid and correct assessment!

On the 25th of June, 1906, the **Liverpool Company** brought suit in the Civil District Court for the Parish of Orleans to cancel this assessment. (Tr., p. 21.) The cause was tried on the 2nd of January, 1907, and decided adversely to Plaintiff on the 17th of May, 1907. (Tr., pp. 12-21.) An appeal was taken to the Louisiana Supreme Court on the 24th of May, 1907. (Tr., p. 22.) The cause was argued and submitted in that court, on the 6th of February, 1908, and the judgment of the lower Court affirmed, on the 22nd of June, 1908. (Tr., pp. 26, 27.)

After the refusal by the Court to entertain an application for rehearing, October 7, 1908, (Tr., pp. 42, 46), this writ of error was prosecuted. (Tr., p. 47.)

Meanwhile, the same arbitrary and **guesswork** assessments, for 1907 and 1908, had been levied against all the nonresident and foreign insurance companies—to wit, one-half of the amount of their annual premiums, when, as a matter of fact, only about one-twelfth of such premiums were uncollected at the end of each year—and these arbitrary assessments were thus made, in spite of the fact that, in January of 1907 and 1908, **due returns were made, under oath, of the actual amounts of outstanding premiums.**

As showing the arbitrary character of these assessments, a stipulation, at page 48 of the transcript, shows:

| | | Actual Outstanding |
|---------------------|-------------|-----------------------|
| Company. | Assessment. | Premium. |
| Commercial | \$27,500.00 | \$362.00 |
| Commercial | 29,175.00 | 305.00 |
| Commercial | 29,100.00 | 516.00 |
| Empire City | 7,483.00 | 296.15 |
| Firemen's | 24,000.00 | 1,389.83 |
| New Amsterdam | 3,500.00 | 320.70 |
| North British | 25,000.00 | 245.00 |
| Ohio German | 15,320.00 | 1,938.75 |
| Orient | 15,930.00 | 1,489.23 |
| Sea | 33,355.00 | 1,408.61 |
| Etc., etc. | | |

The representatives of the insurance companies made due and timely application (in strict conformity with the statute) to the Board of Assessors and to the committee of the Common Council for the reduction of these extravagant and unwarranted assessments, and applied to both bodies to be heard, under the law guaranteeing to them such hearing, and they were refused such hearing, the reason assigned for such refusal being that, inasmuch as the legality of this tax on open accounts was pending before the Supreme Court (in the **Liverpool case**), it would be useless to go into an examination of the one or two hundred applications, inasmuch as, should the tax be held by the Supreme Court to be invalid, it would be time thrown away. (Tr., pp. 14-40, **Orient**.)

Meanwhile, no proceedings were taken and no attempt was made by the tax authorities to collect, by rule or otherwise, the tax supposed to be levied on these assessments.

Tax authorities and insurance companies alike were awaiting the determination by the Court of the legality and constitutionality of this attempt to tax these **open accounts**. There was at least a tacit understanding to await the result of the **Liverpool case**.

It would have been a serious burden of costs and loss of time in the courts to bring from 125 to 200 separate suits for each of the years 1906, 1907 and 1908. The city and tax collector did not proceed, and they fully acquiesced in the nonaction of the insurance companies, pending the determination of the **Liverpool** suit. The city and tax collector were fully aware that the issue had been made and that the tax would not be paid without judicial determination. Unable to obtain an earlier decision of the Louisiana Supreme Court, when, at last, it acted, in June, 1908, these suits were brought by some 125 of the insurance companies in August, 1907, and, later, the suits in each of the five divisions of the Civil District Court were consolidated.

The suits of the **Orient Insurance Company** and of twenty-three other foreign and nonresident insurance companies, allotted to Division C of that court, were all consolidated, tried and decided together, under the title of **Orient Insurance Company et al.**

The petitions are identical except as to names of companies and amounts involved. They are as follows:

PETITION.

To the Honorable the Judges of the Civil District Court for the Parish of Orleans:

The petition of Orient Insurance Company, a corporation organized under the laws of the State of Connecticut,

and domiciled in Hartford, with respect represents:

That the Board of Assessors for the Parish of Orleans, arbitrarily, illegally, and in utter disregard of their official obligations, made against your petitioners, for the respective years named, the following pretended assessments:

“Money loaned on interest, all credits and bills receivable for money loaned on interest or advanced, or for goods sold”:

For 1906, the sum of \$15,000.

For 1907, the sum of \$15,930.

For 1908, the sum of \$15,930.

And for **“Cash or Money in Possession”:**

For 1906, \$1,000.

For 1907, \$1,450.

For 1908, \$1,450.

Now, your petitioner avers that it had not, in any of the years named, in this city or State, any “cash or money in possession.”

That the only **credits**, of any kind, for money due to it were **uncollected premiums, due, under open account, for premiums on insurance policies** issued from its domicile; and your petitioner avers that no legal assessment thereof can be made, nor any tax thereon legally collected, and that all of such assessments are illegal, null and unconstitutional, for the following among other reasons—to wit:

I. The Legislature has not the power to localize an abstract credit away from the domicile of the creditor, the State power of taxation being limited to persons, property or business within its jurisdiction.

II. The levying of a tax upon incorporeal things, such as abstract credits, not in so-called concrete form, and

without tangible shape, violates the Fourteenth Amendment of the United States Constitution.

III. The Revenue Acts of the State of Louisiana do not purport or pretend to authorize the assessment or the levy of a tax upon premiums due to foreign insurance companies under open, unliquidated accounts.

IV. The Constitution of the State of Louisiana prohibits the collection of taxes by suit, and, inasmuch as such open accounts cannot be seized for taxes, and could only be collected by suit, such suit and such collection would violate Article 232 of said Constitution.

V. The Legislature, by Act 170 of 1908, has affirmed the interpretation by the Supreme Court of Louisiana of its Revenue Acts by declaring that all evidence of indebtedness shall be taxable only at the *situs* or domicile of the owner thereof.

VI. The illegal assessment on which the tax claimed is based is absolutely void because it is so grossly excessive as to be inconsistent with an honest judgment, and is so unequal and discriminating as to violate the fundamental law.

In making said illegal assessment, the Board of Assessors did not exercise fairly and intelligently the powers conferred upon them, but they arbitrarily and illegally took as the basis for said pretended assessment of such insignificant amount of uncollected premiums as might be outstanding, at the end of the year, one-half the total sum of the gross premiums earned by respondent on all of its policies for the entire year.

Respondent avers that the said Board of Assessors refused to hear or to consider respondent's sworn applica-

tion for a reduction, stating that, inasmuch as the question of the legality of the tax was pending before the Courts, it would be a waste of time to consider the application for reduction of an assessment which might be altogether null; and Respondent avers that the Committee on Revision of Assessments took the same position and declined to hear respondent or consider the question of the real value of its assessments; and said board and committee never considered the real value or amount of the said premiums, nor attempted to ascertain the same. And because of these acts and refusal, respondent avers that the said assessment is null and void.

Your petitioner avers that, for the year 1906, it made no return for assessment or taxation on these open accounts, the same never having before been assessed, and that it was not aware of the said assessment until too late to apply for the cancellation thereof.

That for the years 1907 and 1908 it made due return and due application, and complied with all the requirements of the law, making its return under protest, denying that any legal assessment thereof could be made or taxes collected, and making its return solely for the purpose of limiting the correct amount of the tax thus sought to be collected, should the Court maintain its legality, which legality was denied; and that thus, under protest, it returned or had:

For 1906, uncollected premiums, \$2,529.45.

For 1907, uncollected premiums, \$1,044.38.

For 1908, uncollected premiums, \$2,398.75.

Wherefore, your petitioner prays that the Board of Assessors for the Parish of Orleans, the City of New Orleans and the State Tax Collector for the First District be

cited to appear and answer this petition, and that, after due proceedings had, there be judgment in your petitioner's favor and against the said defendants, decreeing that the said assessments of **credits, bills receivable, cash on hand and money in possession**, and all taxes thereunder, be declared to be illegal, unconstitutional, null and void, and that the same be ordered canceled from the assessment rolls for the respective years 1906, 1907 and 1908; and that, in the alternative, should the said assessment be held to be legal, the amounts of the said assessment be reduced:

For 1906, \$2,329.45.

For 1907, \$1,044.38.

For 1908, \$2,398.75.

Petitioner prays for all general and equitable relief.

(Signed) HALL & MONROE,

Attorneys.

August, 1908.

The Defendants **answer** said petition, setting up that the petition discloses no cause of action, inasmuch as the suit was not filed within the time prescribed by law—that is, by the 1st of November of each of the said years. The answer further sets up that, if said exception be overruled, Plaintiff is estopped to contest the correctness of the assessments by reason of its failure to have made due returns and due application to the Board of Assessors and the Committee of the City Council.

The answer further sets up that the assessments are just and fair in amount and are not excessive, and that they were made in conformity with **Section 7, Act 170 of 1898.**

Defendants deny particularly that the Board of Assessors or the Committee of the City Council refused to hear or to consider Plaintiff's sworn application for a reduction, but aver, on the contrary, that the allegations in Plaintiff's petition are to the effect that the assessors refused to hear or to consider Plaintiff's sworn application for a reduction, and the further allegation that the Committee of the City Council took the same position and declined to hear the Plaintiff or consider the question of the real value of its assessments, "are absolutely and unqualifiedly untrue and without foundation in fact or in law." (Tr., p. 5.)

Mr. Wright, being sworn for the Plaintiffs, states that the method of conducting the insurance business in this State by foreign and nonresident companies, does not require any money deposit, the solicitors or agents being paid a commission, and they defraying their office and other expenses; that there is no bank deposit or cash held here by the foreign insurance companies, all losses sustained in this State being paid by a draft upon the foreign offices. In the majority of cases the premiums remain uncollected for thirty days. (Tr., pp. 28, 29.)

After a number of witnesses on behalf of these insurance companies had been placed upon the stand, and their testimony taken (Tr., pp. 17-36), the following agreement was entered into by counsel:

"It is hereby agreed, without the necessity for examining witnesses, and subject to all objections to the admissibility of the evidence, and for other causes, except those herein stated, that the following-named witnesses, agents for the respective companies hereinafter named, if placed upon the witness-stand, will testify, in conformity with their affidavits which are here in court, that their respective

companies had, on the date specified, **'no cash or money on deposit'** in the State of Louisiana, and **that the premiums due to them, under open account, were as follows, and no more.** * * * And it is further agreed that due sworn returns were made by these companies for the years 1907 and 1908, and that application to the Board of Assessors and to the Committee on the Revision of Assessment were, likewise, duly made.

"This statement is made subject to verification by counsel, the result of their examination to be later expressed to counsel for Plaintiff." (Tr., p. 36.)

"This statement was verified by counsel." (Tr., p. 37.)

And then follow the names of the different companies, showing their actual outstanding premiums. (Tr., pp. 37, 48.)

C. Taylor Gauche:

Mr. Hall:

"I place this witness on the stand, under Act No. 126 of 1908, which gives the right to a litigant to examine a witness of the opposing side without making him his own witness."

By Mr. Hall:

Q. Mr. Gauche, you are the assessor of the First District of this city?

A. Yes, sir.

Q. And president of the Board of Assessors?

A. Yes, sir. (Tr., p. 9.)

Q. When you made these assessments in 1906, it was the first time you had levied any assessments upon these premiums, as stated, was it not?

A. To the best of my knowledge and belief; yes, sir. (Tr., p. 11.)

Q. How did you reach the amounts of these assessments?

A. From the sworn affidavit, made either to the Secretary of State or the Tax Collector of the First District. We got their affidavits from the Tax Collector of the First District, and we assessed fifty per cent. of that business, and we took fifty per cent. of that assessment and assessed them one-twelfth cash and the other eleven-twelfths premiums in the course of collection, money at interest and bills receivable and any other assessable paper they might have. For explanation: An insurance company doing business in the State of Louisiana made a sworn affidavit to the Secretary of State or the tax collector—doing business of \$500,000—and fifty per cent. of that would make \$250,000, and assessed one-twelfth as cash in bank or in possession or on hand; the other eleven-twelfths we would assess as money at interest or credits, bills receivable, premiums in course of collection.

Q. In other words, your assessment of money loaned on interest (I use the technical expression—all credits and bills receivable for goods sold) was fifty per cent. of the gross premiums of each company for the entire year, less one-twelfth, which you assessed to the item of cash or money in possession?

A. **That was simply, if you want the fact, just about guesswork;** it was the best that we could do under the circumstances.

By the Court:

Q. I understand that you took the amount of the premiums which an insurance company would collect during the year, on all its outstanding policies, divide that into one-half, and make an assess-

ment on the basis of one-half of the premiums that the insurance company would collect in a year?

A. Yes; that is correct. (Tr., p. 11.)

By Mr. Hall:

Q. Then, you or the Board of Assessors took these items from the annual report of the Insurance Department of the State of Louisiana for the years 1905, 1906 and 1907, which contained the sworn statements of these insurance companies, showing the entire premiums collected for all business done in the State of Louisiana during those years?

A. Yes, sir; 1905 we assessed for 1906, and so on.

Q. And, as you say, **it was guesswork?**

A. **Yes, I have to acknowledge that.**

Q. You had, in other words, no information of any kind before you as to what the actual outstanding premiums were?

A. No, sir; none other than their own sworn statements.

Q. For the entire business?

A. Yes, sir.

Q. And then you assumed, at the end of the year, there was uncollected fifty per cent. of all those premiums in making this assessment?

A. **We simply guessed at it; we had no positive knowledge.**

Q. That is, you had no positive knowledge in January, 1906; **but in January, 1907, did not those companies make return, under oath, for the amounts actually due for outstanding premiums?**

A. **Yes;** but the returns were so small that the board refused to receive them.

Some of them, companies doing business of \$500,000; some of them may have made returns that

they were not assessable at all; but, if assessable at all, they would ask to be assessed at a certain amount—that is, the returns that were made—they all made returns not to be assessed.

Q. Would you say five or six thousand dollars?

A. I would say a company assessed for \$250,000 would make return to be assessed from \$12,000 to \$20,000, and we rejected it.

Q. Is it not a fact that in those applications there were sworn affidavits by each of those insurance companies to the effect that the figures given by them were the actual amounts of outstanding premiums?

A. Yes, sir.

Q. Why didn't you take their sworn statements?

A. Because the discrepancy was so large—a company doing business of \$250,000 would make returns for so much less.

Q. Don't you know, as a matter of fact, that insurance premiums are usually collectible in thirty days and sometimes sixty days?

A. Yes, I know it is a rule; certainly.

Q. And that, therefore, at the end of twelve months, presumably, there would be outstanding, uncollected premiums of either one-twelfth or one-sixth of the entire amount of business done?

A. Yes; I believe so.

Q. And yet you gentlemen of the Board of Assessors declined to consider those sworn affidavits and made the assessment for 1907 the same as 1906?

A. We took into consideration that these companies had moneys at interest and may have mortgage notes that might run a year or two years.

Tr., p. 12.

Q. In their affidavits they stated that they had nothing else?

A. I don't remember their affidavits.

Q. And you gentlemen pursued the same course for 1908?

A. Yes, sir; the same course.

Tr., p. 13.

Q. Is it not a fact, Mr. Gauche, that you gentlemen of the Board of Assessors knew that there was pending before the Supreme Court a test case to test the validity of these assessments?

A. We knew they were pending, yes.

Q. Is it not a fact that you reached the conclusion that it was useless to go into an elaborate detail of examination and examine each return when the Supreme Court might declare the entire assessment invalid?

A. It was simply to facilitate the agents of these companies and to have one attorney make their returns.

Q. You remember that I called at your office in this connection, don't you?

A. Yes, I remember you coming there.

Q. Do you remember going with me before the Council Committee on Revision of Assessments?

A. I may have.

Tr., p. 13.

Q. Do you remember your stating to me that both the Board of Assessors and the committee did not care to take the trouble or time to examine into these individual applications because the validity and legality of the tax was pending before the Supreme Court, and it would be simply useless labor, and that, if the Supreme Court decided that the tax should be collected, then you were disposed to make such assessments or allowances as was just and proper?

A. You misunderstood me. I said, in order to facilitate those parties coming before the Board of Assessors. I did not say that we did not have time, but to facilitate them in making returns; that was in 1907, I believe, that their agent, or yourself, or Mr. Wright, had made returns for quite a number of the insurance companies, and we did have a case pending in court, and we were going to assess them the same in 1907 as for 1906; but not that we were not going to accept the returns if they came in.

Q. In other words, you were not going into the question until the validity was determined by the Courts?

A. We had some of those companies up before us in 1907; we heard them—what they had to say; I did make an assessment, and I presume we were going to assess in the same manner in 1907 and in 1906.

Q. Without affidavits?

A. We examined every affidavit and statement that was made, **and, if we found the return that they made anywhere near to what our assessment was, we would have accepted their returns; but they made returns that were not assessable at all.**

Tr., p. 13.

Q. You recall going with me before the committee while it was in session, and my asking the chairman of that committee if he desired to hear these applications, and his telling me, in your presence, that they did not care to take the question up and discuss it, since the validity of the tax was pending before the Supreme Court?

A. I don't remember; you might have gone there with me, but the chairman of that Budget Committee and some other gentlemen knew that these foreign insurance companies' assessments were in-

volved in a suit in court, and, unless the assessor of the district would recommend a reduction, they would make no reduction at all.

Q. And they would not have any examination nor hear any witnesses?

A. I don't know whether they would or not; I never heard them say they would not; there were no witnesses to hear; some came up, and they rejected them.

Q. Don't you remember my going there and speaking to you about it and you telling me that the committee was in session, and my suggesting that we go in, and the chairman received us very courteously and said to me, in your presence, that what you said was perfectly correct; that it was useless to go into an elaborate examination of these one hundred or two hundred applications, pending a determination by the Supreme Court of the validity of the tax; that, if the tax should be held to be invalid, that it would be time thrown away, and, if valid, that they desired to collect such taxes as were actually due; do you remember that?

A. It amounts to the same thing, but not the same words.

Tr., p. 14.

C. C. Swayze, who being first duly sworn by the minute clerk, testified as follows:

Direct examination by Mr. Hall:

Q. Mr. Swayze, will you please state if, on behalf of any insurance company, you went to the Board of Assessors for the purpose of asking whether you could be heard on an application for the purpose of reducing your assessment?

By Mr. Terriberry:

"If your Honor please, I object. This witness is not a plaintiff in this suit and is going to testify about the Penn Mutual Life Insurance Company."

By the Court:

"The objection is good."

By Mr. Hall:

"I tender the witness for the purpose of proving that he went before the Board of Assessors on the third day of April, 1908, and he was informed by the board that it would be useless for us to appear; that this matter for previous years was now in court, and, until a final decision was made, he felt satisfied that the board would take no action thereon."

The objection is maintained, and this bill of exceptions is reserved. (Tr., p. 39.)

Mr. Harry H. Hall, called to the stand by defendants:

"Speaking to the best of my knowledge and belief, and from memoranda which I made at that time, I received a letter from Mr. Swayze, stating that he had gone to the Assessment Office and asked to be heard, and that they had told him that the matter was pending before the Court, and that they did not care to hear him; and I went up there on behalf of his company and these other companies, and spoke to Mr. Gauche, who told me that these matters were pending before the Supreme Court, and that it had seemed to him to be a useless waste of time to go into an examination of the merits of these numerous applications; and I asked him, then, if the Committee on Revision of Assessments was in session. He told me that it was, and he went with me into the room where it was in session, and the foreman arose, and I stated to him what Mr. Gauche had said to me,

and he made the same statement that Mr. Gauche made—that the matter was pending before the Courts, and it would be useless to examine witnesses in support of these applications” (p. 65).

“I desire to say that, if the Committee on the Revision of Assessments desired evidence, I was prepared to offer the evidence under protest. In other words, they had made these assessments for sums largely in excess of the amounts that were due, and I understood, in my several conversations with the Board of Assessors represented by Mr. Gauche, that all they wanted ultimately, if the validity of the assessment was upheld by the Supreme Court, was the actual amounts due, and that they did not want an assessment of eight or ten times more standing upon the books for premiums due; because I thought it was an outrage to have an assessment of that kind stand upon their books, and they told me just what I have stated—that, if the tax was invalid, there was no use of going into a discussion of the matter.” (Tr., p. 40.)

In the **Liverpool case** witness was asked what were the entire premiums for the gross business of the plaintiff company **for the year 1905** in the State of Louisiana. This question was objected to “for the reason that this is a suit for the cancellation of the assessment.” The evidence was admitted and the objection referred to the merits, to which ruling a bill of exceptions was reserved.

The witness stated that the total returns of the company as sworn to were \$15,563.36 for 1905.

Witness was asked whether, to the best of his knowledge and belief, the premiums for 1906 would be greater or less than 1905, and he stated that they would be slightly decreased as compared with the previous year. **There was no objection made to this question and to this answer, so that**

the testimony received without objection establishes without contradiction that the maximum gross receipts of premiums for the year 1906 were less than \$15,563.36. (Tr., p. 13.)

Witness further states that no returns were made on the 1st of January, 1906, because no assessment had ever been made upon these premiums, and it was not understood that the companies were required to make returns. (Tr., p. 14.)

He says no notes are received from the policyholders for account of premiums. These premiums are paid within thirty or sixty days, the majority of them being paid in thirty days, so that at the end of 1905 there would have remained uncollected from one-twelfth to one-sixteenth of the entire annual premiums. (Tr., p. 16.)

These premiums are due under open account, and no acknowledgment of any kind is ever taken for them. **Five-sixths of these premiums are unearned after sixty days, and do not really belong to the company.** (Tr., p. 17.)

No suit has ever been brought by Plaintiff for any uncollected premium. No suit could be brought except for the earned portion thereof. When we cannot collect premiums we cancel the policy for nonpayment. Not in the history of the Plaintiff has a suit ever been brought for the collection of a premium. (Tr., pp. 17, 18.)

There was a judgment in the lower court against the **Liverpool company** dismissing its suit and permitting the assessment of \$112,000 to stand as a valid assessment on the ground that the suit was brought to cancel, and not to reduce, the assessment. (Tr., p. 21.)

The judgment was affirmed by a majority of the Judges of the State Supreme Court for the reasons assigned

in the recent case of **General Electric Company vs. Board of Assessors. Breaux, C. J., and Monroe, J., dissented.** (Tr., p. 28.)

In the **General Electric case** the judgment was affirmed by a majority of the State Supreme Court. **Breaux, C. J., and Monroe, J., dissenting; Nicholls, J., concurring in the decree, and Land, J., stating:**

"I concur in the decree on the ground that the tax is on capital invested in this State." (Tr., p. 41.)

Tr., p. 41.

There was judgment in the Civil District Court in the **Orient case** canceling all of the assessments of **cash and money in possession**, and reducing the assessment on **credits** for 1906 and 1908 to the sums admitted to be the amounts of uncollected premiums, but allowing the assessments for 1907 to remain as made. (Tr., p. 46.)

On appeal, the Louisiana Supreme Court said:

"The assessments are grossly excessive, so much so that it is manifest that they were the result of mere guesswork, as, indeed, is testified to by the one member of the Board of Assessors.

"More than this, the Board of Assessors was furnished by the Plaintiffs with a correct return for the years 1907 and 1908. But the suit for the reduction of the assessment of 1906 and 1907 is barred by the said statute. As to them the Court is powerless to grant relief. A plain and positive provision of law cannot be disregarded, even for the purpose of correcting gross injustice.

"The returns made for the Plaintiff for the year 1908 were correct, and the assessments for that year will have to be reduced accordingly. The contention of the Plaintiffs' learned counsel is that assessments so grossly excessive as those here in question—six

times as large as they ought to be—are absolutely null, in that they are not the exercise of judgment on the part of the Assessors, as the law requires that an assessment should be, but merely of guesswork or caprice. We cannot adopt that view. **Such as the assessments are, they are assessments. They were intended to be such, and are such in fact.**” (Our boldface.) (Tr., p. 62.)

Plaintiffs filed petitions for rehearing, which were refused. (Tr., pp. 42, 46, 63, 65.)

Whereupon these **writs of error** were prosecuted.

It will suffice, we assume, to consider one of those applications. It is as follows:

“The petition of the **Orient Ins. Company** and other companies plaintiff represents:

“That on the —— day of November, 1909, the Supreme Court of Louisiana rendered against your Petitioners a judgment, which, by refusal of an application for a rehearing, became final on the 13th day of December, 1909, in a certain cause, No. 17,713 of the docket of that Court, and wherein your Petitioners were Plaintiffs, and the Board of Assessors for the Parish of Orleans, the State Tax Collector and the City of New Orleans were Defendants, and rejected your Petitioners’ demand for the cancellation and annulment of alleged illegal assessments against them in the approximate aggregate sum of \$835,000, being alleged amount of premiums due, under open account, to your Petitioners by their Louisiana debtors for fire insurance policies issued to them from Petitioners’ domiciles in foreign countries or States other than the State of Louisiana, and which assessments were, in fact, nearly ten times the amount of premiums actually outstanding and due,

as shown by sworn returns duly made to the Board of Assessors; and

"Petitioners aver that judgment was rendered, awarding execution against your Petitioners for ten per cent. of the taxes involved as attorney's fees and costs, as will appear by the records and proceedings in said cause.

"Petitioners aver that the said Supreme Court of Louisiana is the highest court of the said State in which a decision of this sort could be had; and

"Your petitioners claim the right to remove the said judgment to the Supreme Court of the United States by writ of error, under the statutes of the United States, authorizing a writ of error to State Courts, to wit: **Par. 709, R. S.; Judiciary Act of March 3, 1891; 26 Statute, 826, Chapter 517.**

"Because Petitioners in said suit aver:

"1. That the levying of a tax upon incorporeal things, such as insurance premiums due on open account to a nonresident corporation, violates the Fourteenth Amendment of the U. S. Constitution.

"2. That a debt intangible in form cannot, independently of the domicile of the creditor, acquire a *situs* for the purpose of taxation. (**206 U. S. 401-410.**)

"3. That an open account not resulting from capital invested within the taxing State, but being a premium due on open account to a foreign or nonresident corporation, or insurance company having no capital invested in the taxing State, and whose only capital is its reserve at its own domicile, cannot be assessed and taxed at the domicile of the debtor without violating the Fourteenth Amendment of the United States Constitution. (**205 U. S. 395; 175 U. S. 309; 191 U. S. 388; 177 U. S. 133; 122 La. 134; 121 La. 108, 115.**)

"4. That the assessments herein complained of were grossly excessive, from six to ten times the amount of premiums outstanding, and were the result, as admitted by the Board of Assessors, and found by the Supreme Court, of mere guesswork, arbitrary and capricious, and were not the result, in any manner, of the exercise of judgment on the part of the assessors, as the law requires.

"That the assessors refused to consider the sworn returns of the Petitioners as to the true amounts of the premiums, and that the said Board of Assessors and the Committee on Revision of Assessments refused to give to Petitioners the hearing in the matter of the said assessments to which, under the specific terms of the revenue statutes, they were entitled, the reason assigned for this refusal being that there was pending, in the Supreme Court, a cause to test the legality of this tax upon insurance premiums, and that it would be a useless waste of time, in the meanwhile, to consider these applications.

"That, acting on this refusal and the necessarily-inferred understanding, these suits were not brought prior to the 1st of November of the years 1906 and 1907.

"That, notwithstanding that Petitioners acted in perfect good faith in the premises, the enforcement, under these circumstances, of the statutory provision of the revenue law that relief could not be had because suit was not filed prior to the 1st of November, 1906-1907, would be a taking of Petitioners' property without due process of law and in violation of the Fourteenth Amendment of the Constitution of the United States. (207 U. S. 140.)

"5. That, to hold that Petitioners may not be heard to show their good faith in accordance with an understanding to await before suing the decision

of a test case, and to hold that, because of such delay ensuing, they are precluded from setting up in court the refusal of the assessors to hear them, is a deprivation of their property without judicial action and without due process of law, in violation of said Fourteenth Amendment. (207 U. S. 140.)

"All of which appears by the record of proceedings in this cause, which is herewith submitted.

"Petitioners aver that the Supreme Court of Louisiana, in said cause, by a majority of one, decided otherwise, and in direct opposition to the decisions and jurisprudence on this subject of the Supreme Court of the United States and against the constitutional rights asserted as above.

"Wherefore, your Petitioners pray the allowance of a writ of error, returnable to the Supreme Court of the United States, and for citation and *supersedeas*, and it will ever pray, etc.

(Signed) "HALL & MONROE,
"Attorneys for Petitioners."

And thereupon was filed the following

ASSIGNMENT OF ERRORS.

"Afterwards—to wit, on the first Monday of December in said term—before the Justices of the Supreme Court of the United States, at the Capitol in the City of Washington, D. C., came the said **Orient Insurance Company** and other Plaintiffs and Petitioners herein, by **Hall & Monroe**, their attorneys, and say that, in the record and proceedings aforesaid, there is manifest error in the opinion and decree of the Louisiana Supreme Court in this—to wit:

"1. The Court erred in holding that the levying of a tax on incorporeal things, such as insurance

premiums due on open account to a nonresident corporation, does not violate the Fourteenth Amendment of the United States Constitution.

"2. The Court erred in holding that a debt, intangible in form, can, independently of the domicile of the creditor, acquire a *situs* for the purpose of taxation. (205 U. S. 401-410.)

"3. The Court erred in holding that premiums due on open account to a nonresident or foreign corporation are identical with open accounts due such nonresident but resulting from capital invested within the taxing State, the fact being that such foreign and nonresident insurance companies have no capital or money invested in this State, and that, consequently, the premiums due do not result from such capital, the only capital being the reserve held at the foreign domicile to guarantee losses. (205 U. S. 395; 175 U. S. 309; 191 U. S. 388; 177 U. S. 133; 122 La. 134; 121 La. 108-115.)

"The *opinion* states:

" 'The assessments are grossly excessive, so much so that it is manifest that they were the result of mere guesswork, as, indeed, is testified to by one member of the Board of Assessors.

" 'More than this, the Board of Assessors was furnished by the Plaintiff with a correct return for the years 1907 and 1908—the contention of the Plaintiff's learned counsel is that assessments so grossly excessive as those herein questioned—six times as large as they ought to be—are absolutely null in that they are not the result of the exercise of judgment on the part of the assessors, as the law requires that an assessment should be, but merely of guesswork and caprice.

" 'We cannot adopt that view; such as the assessments are, they are assessments; they were intended

to be such and are such in fact. They are not annulable *in toto*.'

"Further, the Supreme Court held that, because the revenue act provides that actions to test the correctness of such assessments must be filed before November of the year in which they were made, these Plaintiffs, in spite of a tacit understanding to await the decision of a pending test case, could not be heard to test the nullity of these guesswork, arbitrary and illegal assessments, but were bound thereby, and that said Louisiana Supreme Court erred in so holding; and that the action of the assessors, as authorized by the Court, and the enforcement of such illegal assessments and of the statutory provisions aforesaid, is a taking of Petitioners' property without due process of law, in violation of the Fourteenth Amendment of the Constitution. (207 U. S. 140-145.)

"5. It is averred in the petition, proven and admitted, that the Plaintiffs made due returns to the assessors, which were arbitrarily disregarded, and their applications to be heard by the assessors, in spite of the sworn returns, were refused, upon the ground that a test case was pending and that, until the legality of the tax had been determined by this Court, it would be a waste of time to consider the accuracy of the assessments and returns; and the Louisiana Supreme Court erred in holding that such refusal was not, as alleged, a taking of Petitioners' property without due process of law, in violation of the Fourteenth Amendment. (207 U. S. 140.)

"6. The Louisiana Supreme Court erred in holding that, because of the failure to file these suits prior to the 1st of November, 1906 and 1907, Petitioners were precluded to claim the nullity or excessive character of the assessments complained of, the statutory penalty as to failure to institute suit before November being no more imperative than the statutory failure to make due returns.

"And the said Court erred in holding that Petitioners could not be heard to show their good faith in accordance with an understanding to await, before suing, the decision of a test case, and in holding that, because of such delay in suing, they were precluded from setting up in court the refusal of the assessors to hear them, and because of such refusal they are deprived of their property without judicial action and without due process of law, in violation of the Fourteenth Amendment. (207 U. S. 138; 122 La. 129.)

"And the said **Orient Insurance Company** and other plaintiff insurance companies pray that the judgment and decree of the said Supreme Court of Louisiana may be reversed, annulled and altogether held for naught, and that they may be restored to all things which they have lost by occasion of the said judgment.

(Signed) "HALL & MONROE,
"Attorneys for Plaintiffs in Error."

ARGUMENT.

May It Please the Court:

Before considering the grounds of complaint common to both of these cases we will briefly refer to a point peculiar to the **Liverpool case**. An assessment, unexplained, of \$112,000 was made against the **Liverpool Company on outstanding premiums due under open accounts**, when the true, admitted amount of those premiums was \$1,500!

The State Court, admitting the gross injustice of the act, permitted this assessment, **eighty-five times greater than the true value**, to stand, because the suit was filed for cancellation, not reduction.

The demand for the cancellation of the entire assessment, coupled with the allegation of nullity and the prayer for all **general and equitable relief**, should cover the proven nullity of the excess and the Court, in its equity powers, would hardly impose, in addition to the penalties attached by law, a tax eighty-five times as great as the sum actually due if the tax were legal.

It is true that the petition did not pray, in the alternative, for a reduction as such. **But the testimony showing that the outstanding premiums were only \$1,500 was received without objection.**

The witness was asked what were the gross premiums for 1905.

This question was objected to, the objection referred to the merits and a bill reserved; but no statement was made that the same objection should apply to subsequent similar questions.

And thereafter the witness proved, without any objection made, **the amount of premiums for 1906, being the ones at issue.** It may be well that counsel recognized that the objection, if made and maintained, might operate injustice. But, if he had objected, Plaintiff could and would have asked to amend its petition.

"Amendments should be allowed when they cause no injury and prevent a multiplicity of suits."

5 An. 674; 10 An. 599.

And will be allowed at any stage of the cause to further justice.

2 M. 279; 11 M. 639; 2 U. S. 625; 4 U. S. 516.

3
3

Courts always lean to the correction of an error that works injustice.

12 An. 116.

But defendants did not object, and there was no need for amendment, nor yet for another suit to reduce.

"If a party mistake his right in the petition, the error is cured by evidence establishing it, if, when offered, it is not objected to."

11 M. 26.

"The admissibility of evidence given of facts not alleged in the petition should be objected to when offered, and the point reserved; otherwise, it will be considered as if it had been responsive to an allegation in an amended petition filed with the consent of the opposite party."

England vs. Gibson, 15 An. 304; 15 An. 389; 16 An. 273; 4 An. 193; 5 An. 184; 9 An. 255; 20 An. 241; 18 La. 328, 310; 26 An. 160; 33 An. 801; 46 An. 1373; 47 An. 1596.

Coming to the main issues common to both consolidated cases we submit:

I. II.

The Louisiana Supreme Court erred in holding that the levying of a tax on incorporeal things, such as insurance premiums due on open account to a nonresident corporation, does not violate the Fourteenth Amendment of the United States Constitution.

The Court erred in holding that a debt, intangible in form, can, independently of the domicile of the creditor, acquire a *situs* for the purpose of taxation.

Now this Court has never held otherwise than that **open accounts** due by a local debtor to a nonresident or foreign creditor could not be taxed at the domicile of that debtor. We append a brief synopsis of the decisions:

In **St. Louis vs. Ferry Company**, 11 Wallace, 429, this Court said:

"Where there is jurisdiction neither as to person nor property the imposition of a tax would be **ultra vires** and void. If the Legislature of a State should enact that the citizens or property of another State or power should be taxed in the same manner as the persons and property within its own limits and subject to its authority, or in any manner whatsoever, such a law would be as much a nullity as if in conflict with the most explicit constitutional inhibition. Jurisdiction is as necessary to valid legislative as to valid judicial action."

In **Louisville, etc., Ferry Co. vs. Kentucky**, 188 U. S. 385, it was held:

"All rights over which the sovereign power of a State extends are objects of taxation; those over which it does not extend are upon the soundest principles exempt from taxation. * * * The taxation of that franchise or incorporeal hereditament by Kentucky is, in our opinion, a deprivation by that State of the property of the ferry company without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States; as much so as if the State taxed the real estate owned by that company in Indiana." (Tr., p. 398.)

In **State Tax on Foreign-Held Bonds**, 15 Wallace, 300, this Court said:

"The power of taxation, however vast in its character and searching in its extent, is necessarily

limited to subjects within the jurisdiction of the State. These subjects are persons, property and business. Whatever form taxation may assume, * * * it must relate to one of these subjects. It is not possible to conceive of any other. * * * Corporations may be taxed, like natural persons, upon their property and business, but debts owing by corporations, like debts owing by individuals, are not property of the debtors in any sense. They are obligations of the debtors, and only possess value in the hands of the creditors. With them they are property, and in their hands they may be taxed. To call debts property of the debtors is simply to misuse terms. All the property there can be, in the nature of things, in debts of corporations, belongs to the creditors to whom they are payable, and follow their domicile wherever they may be. The debts can have no locality separate from the parties to whom they are due. **This principle might be stated in many different ways and supported by citations from numerous adjudications, but no number of authorities and no forms of expression could add anything to its obvious truth, which is recognized upon its simple statement"** (p. 319).

In **Kirtland vs. Hotchkiss**, 100 U. S. 491, the Court held that a **bond** could be assessed at the domicile of the creditor, although secured by mortgage upon real estate located elsewhere, and **held** further:

"The Constitution does not prohibit a State from taxing her resident citizens for debts held by them against a nonresident, evidenced by his bonds, payment whereof is secured by his deeds of trust or mortgages upon real estate situated in another State.

"For the purposes of taxation a debt has its **situs** at the residence of the creditor, and may be there taxed."

In **United States vs. Erie R. R. Co.**, 106 U. S. 327, the Court held:

"There are limitations upon the powers of all Governments, without any expressed designation of them in the organic law—limitations which inhere in the very nature and structure, and this is one of them: That no rightful authority can be exercised by them over alien subjects or citizens resident abroad, or over their property there situated" (p. 334).

In **Hagan vs. Reclamation District**, 111 U. S. 701, the Court repeated, with approval, the principles announced in the **15 Wallace case**.

In **Pullman Palace Car Company vs. Pennsylvania**, 141 U. S. 18, the Court said:

"A nation within whose territory **any personal property is actually situated** has an entire dominion over it while therein, in point of sovereignty and jurisdiction, as it has over immovable property situate therein.

"The tax on the capital of the corporation, on account of its property within the State, is, in substance and effect, a tax upon that property" (p. 25).

In **Erie R. R. vs. Pennsylvania**, 153 U. S. 628, the Court, citing numerous decisions and holding that the State of Pennsylvania could not, consistently with the Constitution of the United States, impose upon the railroad company, when paying in the City of New York interest upon its bonds held by nonresidents of Pennsylvania, deduct from such interest the amount of the Pennsylvania assessment, said:

"No principle is better settled than the power of a State, even its power of taxation in respect to property, is limited to such as is within its jurisdiction."

In **Savings Society vs. Multnomah County**, 169 U. S. 421, it was stated that a statute of Oregon taxing **mortgages** upon land in that State to the mortgagees in the county where the land lay, did not, as applied to mortgages owned by citizens of another State, contravene the Fourteenth Amendment.

In **Dewey vs. Des Moines**, 173 U. S. 193, the statutes of Iowa authorized a personal judgment against the owner for the paving of a street abutting upon his property, and a personal judgment was obtained against him for the amount of such assessment. The Supreme Court reversed this judgment, and said:

"A State can no more subject to its power a single person or a single article of property, whose residence or legal situs is in another State, than it can subject all the citizens or all the property of such other State to its power" (p. 204).

In **New Orleans vs. Stempel**, 175 U. S. 309, it was held:

"It is well settled that **bank bills** and **municipal bonds** are in such concrete, tangible form that they are subject to taxation where found, irrespectively of the domicile of the owner. They are subject to levy and sale on execution, and to seizure and delivery under replevin. Notes and mortgages are of the same nature" (p. 310).

In **Bristol vs. Washington County**, 177 U. S. 133, the Court held:

"The personal property of a citizen of and resident of one State, invested in **bonds** and **mortgages**

in another State, is subject to taxation in that other State" (p. 133).

" * * * a credit which cannot be regarded as situated in a place merely because the debtor resides there, must usually be considered as having its situs where it is owned, at the domicile of the creditor. The creditor, however, may give it a business situs elsewhere, **as where he places it in the hands of an agent for collection or renewal**, with a view to re-lending the money and keeping it invested as a permanent business" (p. 144).

In **Blackstone vs. Miller**, 188 U. S. 189, a deposit of money made by a citizen of Illinois with a trust company in the City of New York, and allowed to remain there fourteen months, was held to have been delayed there a sufficient length of time to justify the finding of the State Court that it was not in transit, and it was held that, under the laws of New York, such deposit was subject to the Succession Transfer Tax.

There was no question in this case of an open account, and the Court specifically said:

"There is no conflict between our views and the point decided in the cases reported under the name of State tax on foreign-held bonds." (p. 206.)

In **Louisville, etc., Ferry Co. vs. Kentucky**, 188 U. S. 385, this Court held that a franchise granted by the State of Indiana for maintaining a ferry across the Ohio River to the Kentucky shore, was an incorporeal hereditament, having its legal **situs**, for the purpose of taxation, in Indiana, and that all taxation of the same by Kentucky would amount to a deprivation of property without due process of law.

In Board of Assessors vs. Comptoir National D'Es-compte de Paris, 191 U. S. 388, the Court held:

"There is no inhibition in the Federal Constitution against the right of a State to tax property in the shape of credits, where the same **are evidenced by notes or obligations held within the State, in the hands of an agent of the owner for the purpose of collection or renewal, with a view to new loans, and carrying on such transactions as a permanent business.**"

In Metropolitan Life Ins. Co. vs. City of New Orleans, 205 U. S. 395, the Court held:

"Where a nonresident enters into the business of loaning money within a State and employs a local agent to conduct the business, the State law taxes the capital employed, precisely as it taxes the capital of its own citizens in like situation, and may assess the credits arising out of the business, and the foreigner cannot escape taxation upon his capital by temporarily removing from the State the evidence of credits which, under such circumstances, have a taxable situs in the State of their origin."

In Buck vs. Beach, 206 U. S. 407, the Court says:

"Although public securities, consisting of State bonds and bonds of municipal bodies, and circulating notes of banking institutions, have sometimes been treated as property in the place where they were found, though removed from the domicile of the owner (**State Tax on Foreign-Held Bonds, 15 Wall. 300, 324**), it has not been held in this court that simple contract debts, though evidenced by promissory notes, can, under the facts herein stated, be treated as property and taxed in the State where the notes may be found.

"As is said in the above-cited case, at page 320: 'All the property there can be in the nature of things, in debts of corporations, belongs to the creditors, to whom it is payable, and follows their domicile, wherever that may be. Their debts can have no locality separate from the parties to whom they are due. This principle might be stated in many different ways, and supported by citation from numerous adjudications, but no number of authorities, and no forms of expression, could add anything to its obvious truth, which is recognized upon its simple statement.'

"The cases cited in **Metropolitan Insurance Company case, supra**, show that this rule is enlarged to the extent of holding that capital, evidenced by written instruments, invested in a State, may be taxed by the authorities of a State, although their owner is a nonresident, and such evidences of debt are temporarily outside of the State when the assessment is made. Although the language of the opinion in the case of **State Tax on Foreign-Held Bonds, supra**, has been somewhat restricted so far as regards the character of the interest of the mortgagee in the land mortgaged (**Savings, etc., Society vs. Multnomah County, 169 U. S. 421, 428**), the principle upon which the case itself was decided has not been otherwise shaken by the later cases."

And the Supreme Court of Louisiana followed implicitly the law as thus defined, until the present cases were otherwise decided upon grounds which, we respectfully submit, do not commend themselves to reason or even expediency.

Again, for convenient reference, we submit the following synopsis of the Louisiana decisions:

In 1889, the Supreme Court of Louisiana, in **Barber Asphalt vs. City, 41 La. An. 1015**, had under consideration

the attempt to tax open accounts due to the plaintiff for paving work. The Court held:

"Debts, and other incorporeal rights, when treated as property for the purposes of taxation, can be assessed only at the domicile or place of residence of the creditor, without regard to the domicile of the debtor. The principle applies to corporations as well as to natural persons. Hence, debts due to a foreign corporation by residents of this State cannot be taxed in this State."

In 1892, in **Liverpool and London and Globe Ins. Co. vs. Board of Assessors**, 44 La. An. 760, this same assessment on uncollected premiums was attempted to be levied.

The Court cited, with approval, the decisions of the United States Supreme Court and numerous tribunals, and held:

"The issues are limited to all credits assessed for premiums due. A debt, to a nonresident of a State, is not liable to be taxed by a State in which he does not reside. His credits are not within the State's jurisdiction. They are of no value to the debtor. All the value there is in them belongs to the creditor and is taxable at his domicile. (**Cooley**, 2d Ed., p. 21; 15 Wall. 300, 319; 11 Allen, 268; 4 Woods, 205; 4 Me. 497; 11 N. Y. 563; 7 Minn. 198; 21 Vt. 152; 47 Ky. 477.)

"All corporations are taxable on property within the State. Debts are not property when the creditor is not a resident of the State. * * *

"The creditor cannot be taxed because he is not within the jurisdiction, and the debts cannot be taxed in the debtor's hands through any fiction of the law, which is to treat them as being for this purpose the property of the debtors.

"They are not the property of the debtors in any sense; they are the obligations of the debtor, and only possess value in the hands of the creditors. With them they are property, but to call them property in the hands of the debtors is simply a misuse of terms. (27 Gratton, 344; 11 Allen, 268; 67 Ga. 489; 22 Fed. Rep. 602; 106 Ill. 25; 100 U. S. 496.)

"The mere right of a foreign creditor to receive from his debtor within the State the payment of his demand cannot be subjected to taxation within the State. The proposition of counsel for Defendant, that the **Statute 106 of 1890**, under which the taxes here claimed are levied, authorizes the taxation of credits held by nonresidents, is true.

"The statute must be applied in so far as relates to tangible movables belonging to nonresidents, and as to them the general rule recognized by the comity of States, **mobilia personam sequuntur**, must yield.

* * *

"We are dealing exclusively with the question of credits as assessed, and we hold, as decided in **41 Annual, 645, 1015**, "that debts have their situs at the domicile of the creditor,' because debts are property and have a value which is inseparable from the creditor, and because the State has no greater power or jurisdiction to tax debts due to nonresident creditors than it has to tax any other personal property of such nonresidents which is not situated in the State." (P. 764.)

In 1894, in **Railey vs. Assessors, 44 La. An. 766**, the same attempt to levy an assessment upon **outstanding open accounts for premiums due a nonresident insurance company** was considered by the Supreme Court, and the principles announced by the Court in the preceding case were

affirmed and reiterated. An application for a rehearing was denied. The Court said:

"The simple question presented to us was whether the State possesses jurisdictional power to tax such mere debts due to foreign creditors. There is no doubt of the legislative power to modify the rule of comity, **mobilia personam sequuntur**, in many respects. Movables having any actual situs in the State may be taxed there, although the owner be domiciled elsewhere. Even debts may assume such **concrete** form in the evidences thereof that may be similarly subjected, **when such evidences are situated within the State**, as in the case of **bank notes, public securities, and, possibly, of negotiable promissory notes, bills of exchange or bonds**. But, as to mere ordinary debts, reduced to no such concrete forms, they are not capable of acquiring any situs distinct from the domicile of the creditor, and no legislative power exists to change that situs, as far as nonresident creditors are concerned." (P. 770.)

In **Clason vs. City**, 46 An. 1, the Court held:

"Moneys standing to the credit of a nonresident firm on the books of a New Orleans bank are not taxable."

In **State ex rel. Insurance Co. vs. Board of Assessors**, 47 An. 1545, it was held:

"But it has never been decided that tangible personal property could not be assessed at the owner's domicile, notwithstanding its actual situs was abroad in some other State or country."

In **Bluefields Banana Co. vs. Board of Assessors**, 49 An. 43, the Court held liable to assessment the **cash in bank**

of the plaintiff, because the same was retained **for the purposes incidental to the prosecution of its business**, and for such other purposes as the foreign company might direct its fiscal agent to apply it to.

In **Parker vs. Strauss**, 49 An. 1173, the Court held liable to assessment and taxation **money deposited in bank** by the defendants, a foreign firm conducting a large cotton business in this city, and checking on the said bank **for purposes incidental to the said business**.

In 1899, in **Liverpool and London and Globe Ins. Co. vs. Board of Assessors**, 51 An. 1028, an assessment was again attempted to be levied upon uncollected premiums due under open account to said nonresident corporation.

The Supreme Court reviewed all preceding cases and reaffirmed the previous decisions that such assessment was illegal. The Court said:

"Taxes imposed upon a nonresident, whose property is not within the State, are null, as tax laws can have no extra-territorial effect. Debts due to a nonresident (still in nonconcrete form) have their situs at the domicile of the creditor, and not at the domicile of the debtor" (p. 1028).

The Court further notes the similarity, in the respective revenue acts, of the provisions for the taxation of all credits due by persons outside of the State.

Counsel for the defense urged that the former decisions of this Court had no application, because **Section 7 of 1898** was a modification of previous revenue statutes, under which these decisions were rendered. But this cause (**51 An. 1028**) was decided in 1899, under the Acts of 1890 and

1898. This same defense—of modified legislation—was urged, but this Court said:

“The defense also urges that the [former] decisions do not sustain subsequent decisions, because, under the Tax Acts of 1886 and 1888, there were no provisions in conflict with the doctrine, *mobilia, sequuntur personam*. In a former law—*i. e.*, 1886—‘credits’ were subject to taxation due by any ‘person, company, association or corporation **in and out of this State,**’ and all ‘credits’ held, controlled or administered by ‘agents’ and others in this State.

“The revenue law enacted in 1888 is substantially the same, and was not less broad than the Act of 1890. * * *

“In the law requiring ‘debts’ owed by the foreigners to be assessed for taxation, as we take it, it was intended for all such debts as are evidenced by note or by mortgage, or that are in such other concrete form as to render it possible to subject them to taxation under the present laws. * * *

“As to ‘open accounts’ with a foreign company, for such protection as it may offer, the law to date has not localized them so as to render it possible to assess them here and sell them for taxes” (p. 1033).

It is to be noted that **Section 7 of the Acts of 1890, page 124**, referred to, is identical with **Section 7 of the Acts of 1898, page 124**, under which this assessment is attempted to be made.

In **Comptoir National vs. Board of Assessors, 52 La. An. 1319**, the Court said:

“Nonnegotiable **notes**, representing loans in Louisiana made by the agent of a corporation doing business therein, **when kept within the State by the agent**, may be subjected to the law of the State in which they are held.”

In **Williams vs. Triche**, 107 Louisiana, 92, the Court acquiesced in the finding of the District Judge—to wit:

“The jurisprudence of the State, in my opinion, is settled, that intangible or incorporeal rights can only be taxed at the domicile of the owner, where the law fixes their **situs**, and that tangible movables are taxable in whatever place they may be situated.” (P. 96.)

In **State vs. Assessors**, 111 La. 998, the Supreme Court of Louisiana again reviewed many of these decisions, and stated:

“A debt is **res alienum**—that is, to the property of the creditor and not of the debtor. A corporation may be taxed like natural persons upon the property and business. But debts owing by corporations are not property of the debtors in any sense. They are obligations of the debtors, and only possess value in the hands of the creditors. With them they are property, and in their hands they may be taxed. To call debts property in the hands of the debtors is simply to misuse terms. All the property there can be in the nature of things in debts of corporations, belongs to creditors to whom they are payable, and follows their domicile, wherever that may be. Credits can have no locality separate from the parties to whom they are due.”

In **Bunkie vs. Police**, 113 La. 1066: Illegal taxation is certainly a deprivation of property without due process of law.

In **Monongahela vs. Board of Assessors**, 115 La. 566, the debts sought to be assessed were **due-bills** signed by the clerk of a steamboat to which coal was sold. The Court said:

"The business of a nonresident corporation located in this State, and conducted through a local agent, claims of the corporation in definite, tangible form are taxable; similar property owned by a resident being subject to taxation.

"The principle, ***mobilia sequuntur personam***, in matter of taxation does not embrace movable property **in concrete form, such as bills or notes or other property taken in course of the business, used here and collected here.**"

In **Metropolitan Life Insurance Co. vs. Board of Assessors, 115 La. 698**, the Court maintained the validity of an assessment upon **money loaned** in the State, and for which **promissory notes** were taken.

Thus, in all cases, it will be seen that there was **some physical evidence of the credits in the State**, upon which the Courts rested their jurisdiction.

Acting on the faith of these uniform decisions of the highest Courts in this State, and of the United States, the insurance companies of foreign countries and of other States freely issued their policies to the citizens of Louisiana. The other States did not attempt to tax premiums due by their citizens to Louisiana insurance companies. Nor was any further attempt made by the Louisiana authorities to tax these premiums due by Louisiana citizens to foreign and other State insurance companies, until 1906, when the Board of Assessors for the Parish of Orleans took the returns made by these companies for license taxation to the Secretary of State of their **entire** premiums for 1905, and made one-half of them the basis of an assessment of **uncollected** premiums outstanding at the end of the year; and in some cases arbitrarily assessed an amount nearly one hundred times greater than the actual premiums. In 1907 and 1908 these companies

made, under protest and with full reservation, under oath, returns of their actual outstanding premiums, but these returns were ignored and the same arbitrary, unconscionable assessments persisted in.

The Louisiana Court decided in March, 1908, the case of the **General Electric Company**, holding its open accounts liable to assessment.

The opinion practically is that of one Judge. Their Honors Chief Justice Breaux and Mr. Justice Monroe, dissent emphatically. Mr. Justice Nicholls, who was not present, and did not hear the argument, concurred in the decree, presumably not approving the principles laid down in the opinion, and Mr. Justice Land concurred in the decree, "**on the ground that the tax is on capital invested in this State.**"

Now, it is evident that the concurrence of Mr. Justice Land and Mr. Justice Nicholls was solely based upon the fact that the open accounts sought to be taxed resulted from the sale of a stock of goods owned in this city by the General Electric Company, which was conducting, **quoad** that stock of goods, a **mercantile business** in this city. Premitting all discussion of the **right** of the Legislature to localize the accounts due to a nonresident, the concurrence was logical. But when Mr. Justice Provosty handed down his opinion, many weeks later, in the Liverpool case, without reasons, but merely stating that these insurance premiums "**are taxable here, as was held in the recent case of the General Electric Company,**" and when their Honors, Justices Land and Nicholls concurred, we are bound to assume they concurred solely because of the erroneous assumption that the facts, as intimated, were the same.

But they were not the same. This insurance company never had, nor has it, any capital or stock of goods in this State.

These insurance companies are not "mercantile firms," upon whose "stock in trade" Section 7 of the Act of 1898 commands the Assessor to levy his assessments.

Insurance premiums are not **stock or assets** upon which insurance is carried. This section applies solely to the assessment of the stock and assets of mercantile firms, and the words are too plain and straight to be distorted into any other meaning. Insurance is not commercial business.

Paul vs. Virginia, 8 Wallace, 168; Liverpool vs. Massachusetts, 10 Wallace, 573.

The opinion, therefore, rests:

First. Upon the firm conviction of one Judge—a conviction apparently largely the result of a desire to benefit the fisc, he stating:

"The State imposes this tax because of her need of the revenue to be derived from it," etc. (**Liverpool, Tr., p. 43.**)

Second. Upon the acquiescence by another Judge in the result.

Third. Upon the assumption by a third Judge that insurance premiums due by Louisiana policyholders to a foreign corporation are the proceeds of sale of a stock of merchandise located in the City of New Orleans.

And opposed to this is the persistent **dissent**, in all these cases, of two Judges who understand the **Foreign-Held Bonds** case to mean what it says.

Therefore, the opinion which undertakes to overthrow the settled jurisprudence of this State, and runs counter to that of the United States, and of every other Court of the Union, rests solely upon the authority of his Honor Mr. Justice Provosty.

The opinion is elaborate and painstaking to the last degree, and, in discussing the same, we do so with the utmost respect for the indefatigable industry and intellectual sincerity of his Honor.

But, after all is said, we come back to the logical and rational barrier erected by this Court, in the **Foreign-Held Bonds** case, against all hair-splitting sophistries and all arbitrary perversion of the organic law :

“Corporations may be taxed, like natural persons, upon their property and business, but debts owing by corporations, like debts owing by individuals, are not property of the debtors in any sense. They are obligations of the debtors, and only possess value in the hands of the creditors. With them they are property, and in their hands they may be taxed. **To call debts property of the debtors is simply to misuse terms. All the property there can be, in the nature of things, in debts of corporations, belongs to the creditors to whom they are payable, and follows their domicile, wherever that may be. The debts can have no locality separate from the parties to whom they are due. This principle might be stated in many different ways, and supported by citations from numerous adjudications; but no number of authorities and no forms of expression would add anything to its obvious truth, which is recognized upon its simple statement.**” (P. 319.)

State Tax on Foreign-Held Bonds, 15 Wallace, p. 319.

And, in the last expression of the Court upon this subject, your Honors, after citing in full the above quotation from the **Foreign-Held Bonds** case, decide that:

“Although the language of the opinion in the case of **State Tax on Foreign-Held Bonds** has been somewhat restricted, so far as regards the character of the interest of the mortgagee in the land mortgaged, **the principle upon which the case itself was decided has not been otherwise shaken by the later cases.**”

Buck vs. Beach, 206 U. S. 407.

No argument suggesting the convenience of taxing a foreign **open account** at the domicile of the local debtor can have weight in the face of this decision, which confirms and consecrates an unbroken line of decisions of forty years' duration. When a **debt** shall be held to be **property**; when less than **nothing** shall be held to be more than **something**, we shall all be willing to admit that white is black and black is white—but not till then.

We have reviewed these authorities at length for the purpose of showing an unbroken line of decisions of the United States Supreme Court and the Louisiana Supreme Court to the effect that no valid assessment can be levied upon and no tax can be collected for uncollected premiums due to a nonresident corporation on open account.

We submit that, under these repeated decisions of the Louisiana Supreme Court, the issue raised had been crystallized into a well-defined principle, which has become **stare decisis**.

That Court, in **State ex rel. vs. Assessors, 111 La. 1005**, said:

“We do not think that we would be warranted, under the circumstances, in defeating the

reasonable expectations of parties which have been based upon the judgment of this Court."

We submit that, under these repeated adjudications of the Supreme Court, the issue raised has been crystallized into a well-defined principle and has become **stare decisis**.

These foreign insurance companies, for all these years, have issued their policies to the people of Louisiana, giving them the benefit of solvent insurance, as well as of a reasonable competition. They have acted upon the faith of those decisions and they should be protected.

III.

The Court erred in holding that premiums due on open account to a nonresident or foreign corporation are identical with open accounts due such nonresidents, but resulting from capital invested within the taxing State, the fact being that such foreign and nonresident insurance companies have no capital or money invested in this State, and that, consequently, the premiums due do not result from such capital, the only capital being the reserve held at the foreign domicile to guarantee losses.

It is to be noted that these different assessment suits were all argued and taken under advisement by **Mr. Justice Provosty**. The **Liverpool case**, submitted on the 1st of February, was not decided until June 22, 1908, after the rendition of the opinion in the **General Electric case**, and the Court based the decision of the **Liverpool case** upon the opinion and reasoning of the **General Electric case**. Of course there could be no analogy between the two cases.

In **General Electric Company vs. The Board of Assessors**, 121 La. 116 (46 Sou. Rep. 122), the Court, in speaking of the General Electric Company, says:

"It has in New Orleans a local agent and an office, and also a warehouse, where it keeps a stock of goods in its line of business. From this warehouse it sells goods for cash, and also on credit" (p. 116).

"If all the credit customers of Plaintiff's offices and warehouses in the City of New Orleans, utilizing their line of credit constantly to the full limit [and the probability is that they approximately do, and nothing shows that they do not], the Plaintiff has constantly due to it by the residents of this State, and arising out of business done in this State, a matter of \$135,000" (p. 119).

"What has been assessed in this case is the average amount due the Plaintiff, year in and year out, in its New Orleans business, and, therefore, the thing assessed, if it be in this State at all, is in this State indefinitely, and not merely transiently. **Since open accounts due to nonresidents are not taxable in this State, unless situated in this State, the Legislature of this State, by imposing a tax upon open accounts which have grown out of business done in this State, has, by necessary implication, declared that open accounts of that character are situated in this State, or, in other words, has fixed the *situs* of such open accounts in this State as far as in its power lies to do so**" (pp. 122, 123).

"The goods which the Plaintiff keeps on hand in its warehouse are situated there for the purpose of taxation. The goods are physically present to indicate their *situs*. **The open accounts growing out of the same business and representing the price of goods sold out of the same warehouse to persons resident in this State, are incorporeal; and, hence, as**

to them, the truth or falsity of the assertion that they are situated at the domicile of the owner in New York is not so easily tested. But, when it comes to fixing their situs for the purposes of taxation, is said maxim a safer guide in their case than in the case of the goods?" (p. 124).

The suit of the **General Electric Company vs. The Board of Assessors** and the **Liverpool** suit were argued together before the Louisiana Supreme Court. That Court held that, inasmuch as the **General Electric Company** was a mercantile firm, having a large stock of goods in the City of New Orleans, **from the sale of which the accounts in question originated**—that is to say, **that the open accounts sought to be taxed resulted from a commercial business transacted in the State and from a stock of goods actually therein located**—such accounts were liable to taxation.

The Court limited the assessment and tax particularly to such accounts, stating:

"We conclude that the open accounts assessed in the case are part of the capital of the Plaintiff invested in business in this State and as such are taxable in this State."

Mr. Justice Nicholls concurred in the decree, and **Mr. Justice Land** stated:

"I concur in the decree on the ground that the tax is on capital stock invested in the State."

Mr. Justice Monroe and **Chief Justice Breaux** dissented. (Tr., pp. 41, 28.)

121 La. 116 (46 Sou. Rep. 122).

There is a manifest difference between credits resulting from the investment of money in the taxing State or resulting from a stock of goods in that State and therein sold, on the one hand, and the business of life insurance on the other, which requires no capital in the taxing State and invests therein no money or values of any kind whatever.

Its insurance policy is a conditional promise to pay a certain sum of money. Nothing in the way of capital stands behind that promise except the reserve which is held at the home office and is there invested, **but never in the State of Louisiana.**

Now, a very significant fact is that, upon the issuance of a policy, the premium is not earned. Where a man buys merchandise and is allowed, under the custom of trade, thirty days to pay for the same, he receives the goods and uses or consumes them, and the price thereof is absolutely due. With an insurance premium, only so much of the premium can be considered absolutely due as has been earned. At the end of thirty days, if the premium be not paid, the company will only have earned one-twelfth thereof, in which case eleven-twelfths are unearned and do not belong to the company. (*Liverpool, Tr.*, pp. 16, 17.)

It is proven that, in case of nonpayment, the policies, under the conditions therein embodied, are recalled and canceled, and that, as a matter of fact, for the unearned part of the premium, no suit has ever been brought within the history of the company. (*Tr.*, pp. 17, 18.)

So that it is at once apparent that a marked distinction exists between a debt due for an insurance premium and that due for goods sold.

IV.

The Louisiana Supreme Court found:

"The assessments are grossly excessive—so much so, that it is manifest that they were the result of mere guesswork—as, indeed, is testified to by one member of the Board of Assessors.

"More than this, the Board of Assessors was furnished by the Plaintiff with a correct return for the years 1907 and 1908. * * * The contention of the Plaintiff's learned counsel is that assessments so grossly excessive as those herein questioned—six times as large as they ought to be—are absolutely null in that they are not the result of the exercise of judgment on the part of the assessors, as the law requires that an assessment should be, but merely of guesswork and caprice.

"We cannot adopt that view. Such as the assessments are, they are assessments; *they were intended to be such and are such in fact.* They are not annulable in toto."

~~Reversed~~ Further, the Supreme Court held that, because the ~~Supreme Court~~ provides that actions to test the correctness of such assessment must be filed before November of the year in which it was made, these Plaintiffs, in spite of a tacit understanding to await the decision of a pending test case, could not be heard to test the nullity of these *guesswork, arbitrary and illegal* assessments, but were bound thereby, and that said Louisiana Supreme Court erred in so holding, and that the action of the assessors as authorized by the Court and the enforcement of such illegal assessments and of the statutory provisions aforesaid, are a taking of Petitioners' property

without due process of law and in violation of the Fourteenth Amendment of the Constitution. (Tr., p. 62.)
207 United States, 140-145.

The capricious and arbitrary valuation of the Assessors, based upon mere guesswork, is not a valid assessment.

May It Please the Court:

Under the facts shown, these assessments are absolutely invalid.

Assessors have no right to **guess**. The taxpayer is entitled to the mature consideration of every assessment made. Even in 1906 there was no warrant for the assumption by the board that one-half or more of all the annual premiums for the entire year's business were due and uncollected. It is notorious, as Mr. Gauche admits, that premiums are collected in thirty days, or, at the outside, in sixty days. A maximum, therefore, of a permissible assessment would have been one-sixth of the premiums, but should not have exceeded one-twelfth. But, passing this guesswork in 1906, the repetition in 1907 and 1908 of these impossible assessments was absolutely intolerable. In both of those years the Assessors again took one-half or more of the entire business for the year, and did this in spite of the fact that they had before them the sworn returns and sworn affidavits made by responsible and reputable gentlemen.

To do this without a hearing, without investigation, and with full knowledge of the notorious fact that these assessments could not exceed one-twelfth, or, in some rare instances, one-sixth, of the year's revenue, makes the assessments absolutely illegal and void.

If your Honors will examine the assessments made with the returns under oath, you will see that the assessments run from six to ten times, and, in some cases, nearly one hundred times, the amount of the actual premiums outstanding.

"A valid assessment is indispensable."

A. & E. E., Vol. 27, p. 660; 26 An. 694; 30 An. 261.

"No arbitrary assessment can be made either by statute or ordinance."

A. & E. E., Vol. 27, p. 663, and authorities cited.

"In valuing the property and performing other duties involving the exercise of judicial discretion, the personal judgment of the assessing officers is essential to a valid assessment."

A. & E. E., Vol. 27, p. 665; 40 An. 371, and authorities cited.

"When authority to make assessments is conferred upon a board consisting of several members, it cannot be exercised by one of them acting alone."

A. & E. E., Vol. 27, p. 665; 12 Wall. 391; 42 An. 374, and authorities cited.

"Assessments should be made in accordance with the provisions of law and with the securities and solemnities provided by statute."

A. & E. E., Vol. 27, p. 667; 130 U. S. 177, and authorities cited.

"What the law requires of Assessors is an intelligent and fair exercise of the powers conferred upon them. It does not permit them to value property arbitrarily and capriciously, thereby unequally proportioning the burden of taxation."

A. & E. E., Vol. 27, p. 690, and authorities cited.

"In the exercise of the power to tax the purpose always is that a common burden shall be sustained by common contributions, regulated by some fixed general rule and apportioned by the law according to some uniform ratio of equality. The power is not, therefore, arbitrary, but rests upon fixed principles of justice which have for their object the protection of the taxpayer against exceptional and invidious exactions, and it is to have effect through established rules operating impartially."

Cooley on Taxation, 2nd Ed., p. 2.

"The summary nature of tax proceedings has been remarked upon already. They are made summary of necessity. The assessment, if made in compliance with the law, will establish conclusively the basis of periodical taxation. * * * Every owner of property in the State, whether he be an inhabitant or not, is liable to have a lien in like manner established against his property.

"Moreover, the persons who make the assessment lighten the burden upon themselves in proportion as they increase it upon others. They must act to a large extent upon imperfect and unsatisfactory information, and the danger that, when most honest and fair-minded, they will misjudge and thus do injustice, is always imminent. It is, therefore, of the utmost importance for the person assessed that he should have some opportunity to be heard and to present his version of the facts before any demand is conclusively established against him; and it is only common justice that the law should make reasonable provision to secure him as far as may be practicable against the oppression of unequal taxation by making the privilege of being heard a legal right." (Do., pp. 361, 362.)

In Merchants' Insurance Company vs. Board of Assessors, 40 La. An. 372, it was held:

"There was, then, no necessity for the defense to have shown how and where the assessments were made in this case, unless in rebuttal; but the testimony of witness produced proves that he, a mere clerk, made the assessments, which afterwards were accepted and placed upon the rolls. It might be well here to observe that assessors ought not to permit assessments to be made by irresponsible parties when the law imposes that duty upon the mand they have sworn to perform it.

"The testimony shows the ways and means by which the witness arrived at the valuation of the taxable property of the plaintiff corporation. They are clearly at variance with the law, and do not realize the true conditions of things. Even were the testimony lucid and intelligible, which it is not, far from supporting, it would only be destructive of, the assessments complained of."

In Natalbany Lumber Co. vs. Tax Collector and Assessor, 123 La. 174, the Court held:

"There was no partiality shown by the assessing officer; a similar change was made in all assessments in the determination to comply with the instructions of the Board of Equalization. But all of this was office work; there was no attempt made to go over the lands and ascertain their value.

* * *

"We have seen that the property had been assessed in three different classes. No change could be made in the manner proposed. It was not possible under the law to do away with the different classes and assess the property indiscriminately.

This had the appearance of arbitrariness and is not characteristic of that system which should be observed in assessing property."

Union Oil Co. vs. Campbell, Assessor, 48 La. An., p. 1350.

"The powers of the Board of Reviewers are quasi-judicial in character and must be exercised in the manner indicated by law." (P. 1351.)

"We do not understand that the lawmaker intended to invest in a small number of citizens, no matter how worthy they may be, the power of determining of themselves, and for themselves, without rule, check or limit, the rights either of their fellow-citizens or those of the State and parishes. The law contemplates a hearing of both sides. An examination and investigation is a condition to action.

"We had occasion to express our views on this subject in the matter of **The Gas Light Co. vs. The City, 46 An. 1146; ———, 1359.**

"As we said in the **Gas Light Company case**, we do not think it was ever intended by the lawmaker to leave any body of men free to change, arbitrarily of its own will, or through favoritism, dislike or prejudice, such assessments as they might think proper to select, and we repeat here what we said there—that we do not mean to intimate that the reduction of Relator's assessment could not properly and justly have been made, and to the extent to which it was made, or that the board acted arbitrarily or improperly, but that it was called on to act under limited powers and under limitations and restrictions. When powers conferred by statute have not been exercised, under the circumstances and requirements of the statute, the acts done fail for want of authority, even though they would have been right and sustained had legal conditions as to action been complied with" (p. 1360).

In **Waggoner vs. Maumus**, 112 La. 232, it was held:

"None the less, we must say that compliance with the statute is due to the taxpayer. There was a purpose in inserting the different clauses in the statute regarding the steps to be followed in making assessments, and they should not be slighted in any case."

In **Swift & Company vs. Board of Assessors**, 115 La. 321, it was held:

"In assessing the merchandise or stock in trade, the taxing authorities took the total amount of meat received during the previous year, and divided the same by twelve, thus reaching what is called the average value of stock on hand during the previous year. It is argued by defendant that this mode of assessment is warranted by Section 7 of the Act of 1908. * * *

"As a matter of fact, the value of the merchandise or stock on hand was \$1,500, and this value was raised by the Assessors to \$20,000 on the theory that it represented the average value of the merchandise received during the year. * * *

"The Assessors' contention is that the monthly receipts of merchandise during the year should be added together and the sum total divided by twelve.

"This necessarily counts merchandise sold during the month as a part of the stock on hand at the end of each month, and is an assessment of the amount of purchase rather than of stock on hand, so that the money or credits received from sales are also taxable. This method would lead to double taxation, in contravention of the express provisions of Section 7, which declare that no property shall be taxed twice in the same year. * * *

"In the case at bar the total assessment exceeded the total tangible property as assets of plaintiff's property by \$18,500. This result demonstrates that the basis of the assessment of stock on hand is radically wrong."

In the cases under consideration the Assessors have in most cases arbitrarily taken the sum total of all the premiums for insurance sold during the entire year, and have divided the same by two, ignoring the fact that eleven-twelfths of the premiums had been paid. In other cases they have assessed premiums at from twenty to one hundred times their admitted value.

The method is arbitrary in both cases, leads to inequitable results, and cannot be sanctioned by the Courts.

V.

It is averred in the petition, and proven, that the Plaintiffs made due return to the Assessors, which were arbitrarily disregarded and their applications to be heard by the Assessors, in spite of the sworn returns, were refused, upon the ground that a test case was pending, and that until the legality of the tax had been determined by this Court, it would be a waste of time to consider the accuracy of the assessments and returns, and the Louisiana Supreme Court erred in holding that such refusal was not, as alleged, a taking of Petitioners' property without due process of law, in violation of the Fourteenth Amendment. (Tr., p. 70.)

Acts of 1898, Section 26, page 360, and the Acts of 1906, page 96, give to the taxpayer the right to appear be-

fore the Committee on Assessments "and be heard" concerning the descriptions of the property listed and the "valuation of the same as assessed."

"The Committee on Assessments shall determine upon the applications and report to the City Council, * * * said report to contain the affidavit of a majority of the committee that the valuations so fixed are the valuations provided by law." (P. 361.)

In **Cooley on Taxation, 2d Ed., p. 361**, it is said:

"In substance, the question will be whether the right to be heard in tax cases is a constitutional right and indefeasible. Upon this subject there is a general concurrence of authorities in the affirmative. It is a fundamental rule that, in judicial or quasi-judicial proceedings affecting the rights of the citizen, he shall have notice and be given an opportunity to be heard before any judgment, decree, order or demand shall be given and established against him." (Pp. 362, 363.)

"Whatever statutory provisions are made for notice and hearing must be regarded, under the rules of construction already given, as mandatory. A compliance with them in all essential particulars should, therefore, be held a condition precedent to any further proceedings.

"It is not enough to sustain a tax under such circumstances that the officers have acted with just intent, or even that the assessment is relatively fair. The conclusive answer to any suggestion of the kind is that the party has been denied his lawful right to meet such claims at the proper time." (Pp. 365, 366.)

"A person whose property is assessed must have an opportunity to be heard on the question of

the correctness of the valuation and to offer his objection thereto before the proceedings become effectual and his liability definitely fixed. Otherwise, the alleged assessment will be equivalent to a taking of his property without due process of law."

A. & E. E. L., Vol. 27, p. 660.

**A. & E. E. L., Vol. 27, p. 704; 21 F. R. 99;
111 U. S. 701; 48 La. An. 1350.**

"The right of the taxpayer to appear before the standing committee and be heard concerning the description of the property listed and the valuation of the same as assessed, and the report of the standing committee on assessment of the City Council, are proceedings preparatory and prerequisite to the taxpayer's right of action to test the correctness of the assessment in the courts of justice."

Shattuck & Hoffman vs. New Orleans, 39

An. 209; Johnson vs. Tax Collector, 39

An. 538.

"Provision for notice is, therefore, part of the 'due process of law' which it has been customary to provide for these summary proceedings."

Cooley on Taxation, pp. 362, 363.

But the disregard by the assessors, in 1097 and 1908, of the sworn returns of the companies was utterly unjustifiable and illegal. In the face of these affidavits, made by law a part of the proceedings—affidavits based upon exact knowledge, unimpeached and unimpeachable—the assessors ignored this positive evidence which they were bound to consider, and repeated the meaningless performance of copying the reports of the Secretary of State.

"Assessors have no right, arbitrarily, to refuse to believe the evidence of the taxpayers, nor to de-

cline to make deductions, even though the investment was a device to avoid taxation. Where the facts disclosed in the affidavits of the owners render it their duty to do so, assessors should reduce the assessment according to the facts."

Desty, Taxation, Vol. 1, p. 543.

In the opinion of the Court, these fatal defects, violative of the statutory provision of the Revenue Acts, are only answered by the statement:

"Such as the assessments are, they are assessments. They are intended to be such, and are such in fact. They are not annullable in toto." (Tr., p. 62.)

But is this an answer? Would it be an answer in a suit to annul a judgment to say that, although the proof establishes the nullity alleged, such as the judgment is, it is a judgment? It was intended to be a judgment, and is not annullable!

VI.

The Louisiana Supreme Court erred in holding that, because of the failure to file these suits prior to the 1st of November, 1906 and 1907, Petitioners were precluded to claim the nullity or excessive character of the assessments complained of, the statutory penalty as to failure to institute suit before November being no more imperative than the statutory failure to make due returns.

And the said Court erred in holding that Petitioners could not be heard to show their good faith in accord-

ance with an understanding to await, before suing, the decision of a test case, and in holding that, because of such delay in suing, they were precluded from setting up in court the refusal of the assessors to hear them, and because of such refusal they are deprived of their property without judicial action and without due process of law, in violation of the Fourteenth Amendment. (Tr., p. 70.)

207 U. S. 138; 122 La. 129.

Suit was not brought to cancel, or, in the alternative, reduce, these assessments, until 1908.

It is manifest, however, from the testimony of Mr. Gauche and Mr. Hall, that all parties in interest were awaiting the decision of this Court as to the legality of this tax. The assessments were all, at best, tentative, and could not have been taken into consideration in the framing of the budget. The Assessors, equally with the assessed, did not believe that this tax could be collected. Therefore, not only by mutual consent, but from the very exigency of the case, all action was suspended pending the determination of the validity of the tax. The purpose of these requirements is that the budget may not be disarranged; but, inasmuch as these items never could have entered into the consideration of the Budget Committee, no such derangement was possible.

The failure, certainly, to bring these suits was one where the parties in **good faith** were waiting before incurring the heavy expense entailed by the determination of an issue raised by the Board of Assessors after repeated adverse decisions of the Court.

The **good faith** and **honest belief** of these plaintiffs is best manifested by the fact that their contention was con-

sidered well founded by two of the Justices of the Louisiana Court.

The **opinion** states that the tacit understanding that nothing should be done in these proceedings pending the determination of the test case to determine the legality of the tax, while asserted by the Plaintiffs, is denied by the Defendants. It is denied by the counsel for Defendants, but not by the Board of Assessors. The president of the Board of Assessors, referring to the testimony of Mr. Hall to the fact, states that while the agreement was not exactly in the words as stated, **it was the agreement in substance**, and Mr. Frawley, chairman of the Committee on the Revision of Assessments, did not contradict the understanding testified to.

But, after all, the question is not whether there was a binding legal agreement to await the determination of that suit, but whether the Plaintiffs were in good faith and were acting upon their honest belief that the understanding would be carried out.

Your Honors will bear in mind that for ten years the Louisiana Court had repeatedly decided the illegality of this tax, and that two of its Judges still adhere to that former jurisprudence.

Therefore, the case is abnormal, and if ever litigants were justified in believing that they would have relief, this would seem to be the case.

In **Central of Georgia Railway vs. Wright**, 207 U. S. 138, this Court said:

"In view of this statute as thus construed, the question made is whether due process of law is afforded where a taxpayer, without fraudulent intent and upon reasonable grounds, withholds property from tax returns, with an honest belief that it

is not taxable, and the assessing officer proceeds to assess the omitted property without opportunity to the taxpayer to be heard upon the validity of the tax or the amount of the assessment, either in the tax proceedings or afterwards upon a suit to collect taxes, or by independent suit to enjoin the collection" (p. 136).

In the **Travelers' Insurance case**, 122 An. 128, 136, the Louisiana Court recognized fully, as above stated, the supremacy of the Federal question, and said:

"The State may subject to the doom of the Assessor a taxpayer who has failed to furnish a list of his property to the Assessor as required by law, but not where the failure to make such returns was without fraudulent intent and from an honest belief founded upon reasonable grounds that what property he had was not taxable."

Petitioners aver that, in holding herein that they may not be heard to show their good faith in accordance with an understanding to await, before suing, the decision of a test case, and in holding that because of such delay in suing they are precluded from setting up in court the refusal of the Assessors to hear them, and because of such refusal they are deprived of their property without judicial action and without due process of law in violation of said Fourteenth Amendment.

207 U. S. 138.

In that case no return had been made. The revenue act provides that due return is a prerequisite condition for the institution of a suit for relief.

Incidentally, the Court stated that the settled jurisprudence had theretofore been that it was competent for

the Legislature to impose such a penalty, and cites in support a number of decisions; but adds:

"But in the recent cases in **Central of Georgia vs. Wright, 207 United States, 127**, the Supreme Court of the United States held that due process of law requires that, where the taxpayer's failure or neglect to make a return was without fraudulent intent and from an honest belief, founded upon reasonable grounds that the property was not taxable, he must be offered an opportunity to be heard, and that decision is, of course, binding upon this Court, since the question is Federal. And the Court thereupon granted the relief to a reduction to the amount claimed."

Parenthetically, we ask what possible difference is there in the application of this rule of law between the failure to make return or failure to enter suit?

The Louisiana Court failed to recognize **that a statutory provision requiring a return under oath, as a prerequisite to entering suit, has no greater force or effect than a provision in the same statute which requires suit to be brought before the 1st of November.** The decisions of the Court are applicable as well in the one case as in the other. The Court, however, adds that the suit being for cancellation and not reduction, the amount could not be reduced, saying:

"We may add that the Plaintiff suffered no very great loss thereby, since the reduction, if made, could only be from \$40,000 to \$36,779." (P. 137.)

But, in the **Liverpool and London and Globe case**, \$1,500 was assessed at \$112,000!

In the **United States, etc., Co. vs. Assessors, 122 Louisiana, 139**, the Court again held that the taxpayer is

not subject to the **doom of the assessor** when the failure to make a return has been in good faith and on reasonable grounds. And, again, the Court recognized the authority of the case of the **Central of Georgia vs. Wright, 207 United States, 127.**

This whole matter is very fully discussed in that case (**Central of Georgia vs. Wright, 207 U. S. 127**), the Court saying:

"Due process of law requires that opportunity to be heard as to the validity of the tax and the amount of the assessment be given to a taxpayer, who without fraudulent intent and in the honest belief that it is not taxable, withholds property from tax returns; and this requirement is not satisfied where the taxpayer is allowed to attack the assessment only for fraud and corruption.

"The assessment of a tax is action judicial in its nature requiring for the legal exertion of the power such opportunity to appear as the circumstances of the case require, and this Court, as the ultimate arbiter of rights secured by the Federal Constitution, is charged with the duty of determining whether the taxpayer has been afforded due process of law. * * *

"In view of this statute, as thus construed, the question made is, whether due process of law is afforded where a taxpayer, without fraudulent intent and upon reasonable grounds, withholds property from tax returns with an honest belief that it is not taxable, and the assessing officer proceeds to assess the omitted property without opportunity to the taxpayer to be heard upon the validity of the tax or the amount of the assessment, either in the tax proceedings or afterwards upon a suit to collect taxes, or by independent suit to enjoin their collection.

"It would be impossible to reconcile the different holdings in the State courts upon this subject. One class holds that, upon the assessment of omitted property, the taxpayer has no right to be heard, having by his failure to return submitted himself to the 'doom of the assessor.' Another class holds that in such cases there must be an opportunity to be heard before the taxpayer can be thus assessed, and that to deny him such right as a penalty for failure to return is a denial of due process of law secured to the taxpayer by many State constitutions as well as the Fourteenth Amendment to the Constitution of the United States.

"Of course, this Court, as the ultimate arbiter of rights secured by the Federal Constitution, is charged with the duty of determining this question for itself.

"Former adjudications in this court have settled the law to be that the assessment of a tax is action judicial in its nature, requiring for the legal exertion of the power such opportunity to appear and be heard as the circumstances of the case require.

"Davidson vs. New Orleans, 96 U. S. 97; Weyerhauser vs. Minnesota, 176 U. S. 550; Hager vs. Reclamation District, 111 U. S. 701.

"Applying the principles thus settled to the statutory law of Georgia, as construed by its highest Court, does the system provide due process of law for the taxpayer in contesting the validity of taxes assessed under its requirements?

"As we have seen, the system provided in Georgia by the statutes of the State, as construed by its highest Court, requires of the taxpayer that he return all of his property, whether its liability is fairly

contestable or not, upon pain of an *ex parte* valuation, against which there is no relief in the tax proceedings or in the courts, except in those cases where fraud or corruption can be shown in the action of the assessing officer.

"Reluctant as we are to interfere with the enforcement of the tax laws of a State, we are constrained to the conclusion that this system does not afford that due process of law which adjudges upon notice an opportunity to be heard, which it was the intention of the Fourteenth Amendment to protect against impairment by State action." (P. 142.)

We, therefore, submit that the Louisiana Court, in its opinion having found that the assessments in question were mere **guesswork**, and which are, consequently, not legal assessments; it having been shown and not denied by any witness, that the Committee on Revision of Assessments and the Board of Assessors refused to hear the Plaintiffs in the matter of legality and amount of ~~a~~ assessment; it being admitted that the sworn returns of the true values were disregarded and assessments arbitrarily made by guesswork, of many times the true value, permitted to stand; and the Louisiana Court holding that, although Plaintiffs may have been in good faith, they are precluded absolutely from suing upon these nullities by reason of their failure to file these suits prior to the 1st of November, is a deprivation of their property without due process of law and violates the Fourteenth Amendment of the Constitution.

But, apart from the fact that this Plaintiff was acting in good faith in not bringing these suits prior to 1908, the statute has no application to an assessment which is null.

There is no merit in the contention that this suit cannot be maintained because, in so far as the assessments of 1906 and 1907 are concerned, it was not filed before November 1st of each of said years. The provision does not apply to suits which attack the **nullity** of the assessments or any of the proceedings incidental to the levy of the tax.

In **Oteri vs. Parker, Collector, 42 La. An. 374**, it was held:

"It was claimed that the assessments are illegal, null and void because they were made by one single assessor, instead of being subject to the action of the Board of Assessors in and for the Parish of Orleans, as required by law." (P. 375.)

"Counsel for the Tax Collector objected to the introduction of any evidence intended to show the illegality or insufficiency of the assessment, on the ground that suits to test that question should, under the law, have been brought before the 1st of November in each year in which the respective assessments have been made.

"The statutes invoked by counsel which prescribe a limit of time for the action of taxpayers in the courts, touching the assessment of their property, have reference to suits 'to test the correctness of such assessments,' and, hence, they cannot be construed as applying the same limit or restriction to actions or suits presenting questions of alleged radical defects in the assessments sufficient to operate the absolute nullity of the same.

"Of such a nature is the defect presented under the first heading of plaintiff's complaint as hereinabove classified. If the assessment were made by a single assessor without the action of the board, or of a quorum thereof, there has been no assessment within the purview of the law. Hence, it follows

that the deed was legally open to investigation, and that evidence on that point was properly admissible." (P. 376.)

In Railroad Company vs. Sheriff, etc., 50 La. An. 737, it was held:

"A distinction is to be drawn between suits to correct assessments and suits which go to the inherent validity of an assessment and to the legality of the tax based thereon. In the first class are to be put those suits in which an assessment is complained of and attacked for overvaluation and misdescription of the property listed, involving merely the regularity or correctness of the assessment.

"In the second class are to be enumerated those actions attacking an assessment as void on account of radical defects, and drawing into question not the correctness merely of an assessment, but the existence itself of any valid assessment." (P. 742.)

"In the first class, of course, the attack, if successful, results not in destroying, but in reducing or correcting, the assessment; whereas, in the second class of cases, the radical defects made the basis of attack, if found to exist, render the assessment null.

* * *

"The time limit invoked in defendant's exception **applies to the first class of cases only;**
* * * but such time limit has no applicability to the second class of cases. The statutes invoked by counsel which prescribe a limit of time for the action of taxpayers in the courts, touching the assessment of the property, have reference to suits to 'test the correctness of such assessments,' and, hence, they cannot be construed as applying the same limit or restriction to actions or suits presenting questions of alleged radical defects in the assessments sufficient to operate the absolute nullity of the same." (P. 743.)

We, therefore, submit that the Louisiana Court in its opinion, having found that the assessments in question were mere **guesswork**, and, consequently, not legal assessments, and, it having been shown and not denied by any witness, that the Committee on the Revision of Assessments and the Board of Assessors refused to hear the plaintiffs in the matter of legality and amount of assessment, and it being admitted that the sworn returns of the true values were disregarded, and assessments arbitrarily made by **guesswork**, of many times the true value, having been permitted to stand, and the Court holding that, although plaintiffs may have been in good faith, they are precluded absolutely from claiming these nullities by reason of their failure to file these suits prior to the 1st of November, there is a deprivation of their property without due process of law, which violates the Fourteenth Amendment of the Constitution.

Plaintiffs in **Error** respectfully pray that the judgments and decrees of the Supreme Court of Louisiana herein be reversed, amended and set aside, and that the assessments complained of be decreed to be null, void and of no effect. And they pray for all general and equitable relief.

Respectfully submitted,

HARRY H. HALL,

Attorney for Plaintiffs in Error.

J. BLANC MONROE,

MONTE M. LEMANN,

Of Counsel.

November, 1910.

ADDENDA.

We have, in the course of the preceding argument, stated that the **reasons** adduced by the Louisiana Court in support of its opinions and decrees were neither logical nor rational. It has seemed more expedient to add to the argument, rather than to incorporate therein, the argument upon which we base this assertion:

(a)

"Counsel's first argument in support of this contention is founded on the fact that Section 1 of this statute, after naming the different kinds of property intended to be taxed, concludes: 'and all articles or things of value owned **and** held **and** controlled within the State,' using the copulative, and not the disjunctive, conjunction, and that, 'therefore, a thing to be assessed must be owned **and** held **and** controlled within the State of Louisiana.'

"We assume that counsel mean by this nothing more than that the thing to be taxed must be situated here, a proposition no one will quarrel with. Taken as it is expressed, the argument would mean that a thing situated here—a plantation, or a stock of goods, for instance—would not be taxable here, unless owned here. Certainly nothing of that kind can be meant." (Tr., p. 30.)

Our argument was that the Legislature has not pretended to assess or tax any property except that which is "**situated within the State of Louisiana.**"

Act 870 of 1898, p. 347.

This pretermits all consideration of the power, *vel non*, of the Legislature to localize these **open accounts**, but we are attempting to show that the Legislature never intended, or attempted, to so localize them.

The Court answers this by saying:

"A thing situated here—a plantation, or a stock of goods, for instance—would not be taxable here unless owned here." (Liverpool, Tr., p. 30.)

The act specifically states that a tax shall be levied upon

"all movable and immovable, corporeal and incorporeal, articles or things of value owned and held and controlled within the State of Louisiana by any person in any capacity whatsoever" (p. 348).

Therefore, an incorporeal thing, to be assessed, must be **"owned and held and controlled within the State of Louisiana."** The phrase is not in the alternative, but is conjunctive, and unless the open accounts be held **and** owned **and** controlled within the State they are not liable to taxation.

It is self-evident that a New York corporation cannot own in Louisiana a debt due to it in New York. This is again suggested now merely to show that the Legislature itself never intended to tax such foreign incorporeal things.

But where else could a Louisiana plantation be owned **for purposes of taxation** except in Louisiana? Of course the abstract ownership is **everywhere**, for the civilized world would recognize a title valid in Louisiana, but the **effective** ownership is here, irrespectively of the owner's domicile.

Such plantation, or such stock of goods, is, therefore, held **and owned and controlled** in Louisiana.

Physical property needs **control, protection and custody** for its preservation, and that custody must necessarily be where the property is physically located. But what custody or control is needed, or can be had, in Louisiana of an open account due to a New York creditor?

(b)

The Court then says:

"The next argument in support of the contention that the Legislature had not intended to tax these open accounts is that open accounts are not included among the kinds of property upon which taxes are levied. The best possible answer to this argument is: **Read the statute. The word 'open accounts' are there printed** in plain type among the kinds of property upon which taxes are levied, and in equally plain type the duty is imposed upon the Assessor to include 'open accounts' in his assessment. Therefore, the argument merely says 'no' to the plain 'yes' of the statute." (*Liverpool, Tr.*, p. 36.)

But it does not logically follow that because **some** "open accounts" are taxed **all** must necessarily be included. But the Louisiana Supreme Court determined this issue fully in 1899 in *Liverpool and London and Globe Ins. Co. vs. Assessors et al.*, 51 An. 1033:

"In a former law—*i. e.*, law of 1886—all 'credits' were subject to taxation due by any 'person, company, association or corporation in and out of this State,' and all 'credits' held, controlled or adminis-

tered by 'agents' and others in this State. Section 1 of the act is in the Act of 1890.

"The revenue law enacted in 1888 is substantially the same as, and was not less broad than, the Act of 1890.

"Act of 1890.—In the law requiring 'debts' owed by the foreigners to be assessed for taxation, as we take it, it was intended for all such debts as are evidenced by note or mortgage, or that are in such other concrete form as to render it possible to subject them to taxation under the present laws.

"No attempt has been made since the cited decisions were rendered to localize the 'debts,' 'open accounts,' such as those upon which the taxes are now claimed."

(c)

The Court says further:

"Next counsel say that 'open accounts are required to be assessed only when due to mercantile firms.'" (Liverpool, Tr., p. 31.)

The provision in question, **Sec. 7 of 1898, p. 350**, is as follows:

" * * * And provided, further, that in assessing mercantile firms the true intent and purpose of this act shall be held to mean the placing of such value upon the stock in trade, all cash, whether borrowed or not, money at interest, open accounts, credits, etc., as will represent in the aggregate a fair average upon the capital, both cash and credit, employed in the business of the party or parties to be assessed.

"And this shall apply with equal force to any person or persons representing in this State **business interests** that may claim a domicile elsewhere. The intent and purpose being that no nonresident, either by himself or through an agent, shall **transact business** here without paying to the State a corresponding tax to that exacted of its own citizens; and all bills receivable, obligations and credits arising from the **business** done in this State are hereby declared assessable within this State, and at the business domicile of the said nonresident, his agent or representative. It shall be the duty of the Assessor to examine into, and acquaint himself with, the **assurance carried upon the property**. And in determining the **value of the said stock or assets** the average amount of assurance carried by the assured during the twelve months preceding the date of valuation of same shall be by the Assessors considered in determining the value of the said property." (Liverpool, Tr., p. 31.)

It would seem plain that the Legislature could not have had in mind **insurance premiums** when thus providing for the assessment of a stock of goods and instructing the Assessors to average the **insurance carried thereon!**

"The debt has no value at the home of the debtor, and without a credit the debt is without habitation and a name. There must be a creditor for it to have a value. * * * A brief reference to the statutes of the State may be here made. They have never designated premiums or open accounts as subject to taxation. It is true that provision is made for assessing mercantile firms, and the provision is made to apply to any person or persons representing business interests in this State domiciled elsewhere. The section from Act 170, page 346, of 1898, does not

seem to include insurance companies, a class of business by itself, susceptible of easy identification. If it had been the purpose of the Legislature to tax the open accounts of these companies it is more than probable that the statute would have clearly expressed the legislative wish. * * *

"If it had been originally the purpose to tax the business the law would have so declared.

"The business of insurance is generally known. It fills a particular class. It would not occur to the average legislator to refer to it as a person or mention it as a business to be placed upon the same footing among all persons in commercial business. * * *

"Mercantile firms are referred to in Section 7 of the present revenue act. It shows no purpose of including insurance companies. They are considered separately in legislation. (8 Wall. 168.)"

**Dissenting opinion, Breaux, Chief Justice,
National Fire Ins. Co. vs. Assessor, 46
Sou. Rep. 121, 122.**

(d)

The Court adds:

"Tested by the foregoing, the open accounts involved in this case are situated in Louisiana. Not only are they dependent upon the laws of this State for their enforcement, but also they receive from the laws of this State the benefit of a lien or privilege upon the thing sold for the security of their payment. These open accounts receive directly no more protection from the laws of New York than from the laws of China." (Tr., p. 630.)

"Other tests of where a thing is situated are: Where may it be seized in the satisfaction of the debts of its owner? Where may actual delivery of it

be made in case it is sold? And where is the legal evidence of its existence to be found in case its existence is denied?

"Our Code of Practice, by Articles 245 and 246, expressly provides for the seizure of debts in the hands of the debtor by writs of attachment and *feri facias* in a suit against the creditor. * * *

"We fail utterly to understand how it can be said that these open accounts are not within the reach of the taxing power of the State when they are within the reach of the Civil Sheriff for the Parish of Orleans at the suit of any ordinary creditor of Plaintiff, and are within the reach of the Tax Collector, who could, by a regular recourse against them, realize out of them the taxes imposed upon them." (Tr., p. 34.)

But the Tax Collector could **not** seize these **credits** either by garnishment process or writ of *feri facias*.

"**Louisiana Constitution of 1898, Article 233**, provides: 'There shall be no forfeiture of property for the nonpayment of taxes, State, levee, district, parochial or municipal, but at the expiration of the year in which the said taxes are due the Collector shall, without suit, and after giving notice to the delinquent in the manner provided by law, advertise for sale in the official journal,' etc."

This article of the Constitution is identical with **Article 210 of the Constitution of 1879. Act 95 of 1882** carried into effect **Article 210 of the Constitution of 1879**, and provided for the sale of movable and immovable property. (See page 132.)

The Revenue Act of 1898 contains the same provisions for the sale of property under the Constitution of 1898 (p. 368, Sec. 45.)

In 1883, the Louisiana Supreme Court held:

"The payment of taxes, whether due to the State or parish, or to incorporated villages, towns or cities, can no longer be enforced by suit, but only in the mode provided by the act of the General Assembly, approved April 5, 1882."

Mayor and Council vs. Heymann, 35 Annual, 301.

In 1899, the Supreme Court, interpreting this article of the **Constitution of 1879** and the **Revenue Act of 1882**, which was carried into effect, held:

"The whole theory of taxes under the Constitution of 1879, which governed in this case, was based upon the idea that the taxes were a property tax, and that the property assessed should be seized and sold to satisfy the taxes for which it was assessed. The old method of recovering taxes by suit against the debtor was abolished, and in its place the Constitution ordained that the property assessed was to be seized and sold for the taxes. No great difficulty should now arise in seizing and collecting the taxes on every item of the property stated in the Revenue Act as subject to taxation.

"Now, as to debt, a mere debt, a promise to pay, has no value within the limits of the State, if it be due to one not domiciled in the State. Its value is at the domicile of the creditor, where it has its **situs**. It is not property, save at the domicile of the creditor. If assessed and **sold for taxes, we are inclined to think that the title would be greatly wanting in essentials to a perfect legal title.**

"As to 'open accounts' with a foreign company, for such protection as it may offer, the law to date has not localized them so as to render it possible to assess them here and sell them for taxes."

L. & L. & G. Ins. Co. vs. Assessors, 51 Annual, p. 1029.

It is evident that there could be no sale without delivery, and that there could be no delivery of such an incorporeal thing as an unliquidated and an unrecognized debt.

Therefore, when his Honor says

"these open accounts could be seized by the Sheriff or Tax Collector here by garnishment of the debtors; they could be made the basis of the jurisdiction of our Courts in a suit here brought against the absent plaintiff; actual delivery could be made of them here by serving notice on the debtors; the only available legal evidence of their existence is here in the person of the only witness having personal knowledge of the transactions out of which they have grown,"

the Constitution of the State is absolutely ignored. How could actual delivery be made of an abstraction? Why has the debtor alone knowledge of the transaction, rather than the creditor?

(e)

His Honor states that it is claimed by counsel that a distinction must be made between a **credit** and the corresponding **debt**; that the credit is property, and can be taxed, but the debt is not, and cannot be taxed. His Honor said:

"But, with all due deference, this is a mere play upon words."

If this be a play upon words, the statement is made for the first time in the history and jurisprudence of this country. The United States Supreme Court and the

Supreme Court of every other State in the Union that has considered this matter have recognized the **credit** as property and the **debt** as a thing not to be taxed. To say that a **debt** is property is an absurdity. This absurdity would seem not to require judicial assertion. When a man can owe \$1,000, and be thereby the richer for his obligation, the play on words may begin. If a man have nothing, and owes \$1,000, and that obligation can be taxed as a debt, every rule of logic or reason will have first to be abrogated.

(f)

Now, as showing that the Legislature never intended to attempt to subject those debts due to nonresidents to taxation, so long as the Supreme Court interpreted the sections in question as not applying to **credits, open accounts**, due to nonresidents, **the Legislature re-enacted the provisions in the same terms**; but when the Supreme Court, reversing its former ruling, decided, on the 16th of March, 1908, and the 20th of June, 1908, that Section 7 of 1898 applied to such **foreign credits**, the Legislature, on the 3rd of July, 1908, passed Act No. 170, which reads as follows:

*"Be it enacted by the General Assembly of the State of Louisiana, That mortgage notes and indebtedness, and all evidence of indebtedness, shall be taxable only at the **situs** and domicile of holder or owner thereof.*

"Be it further enacted, etc., That all laws in conflict herewith be, and the same are hereby, repealed."



Supreme Court of the United States

No. 92, October Term, 1909.

(No. 793.)

LIVERPOOL AND LONDON AND GLOBE INSURANCE COMPANY,

Plaintiff in Error.

VERSUS

THE BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS, THE CITY OF NEW ORLEANS AND THE STATE TAX COLLECTOR FOR THE FIRST DISTRICT OF THE CITY OF NEW ORLEANS.

In Error to the Supreme Court of the State of Louisiana.

Brief for Defendants in Error.

SYLLABUS.

The imposition by the Legislature of the State of Louisiana of a tax upon the capital employed by a foreign insurance corporation in the conduct of its business in that State, in the same manner and to the same extent as domestic insurance companies are taxed, is not violative of the Constitution of the United

States, but is a legitimate exercise of legislative discretion

Relief not prayed for in the original petition and suggested for the first time in a petition for rehearing in the Supreme Court of the State of Louisiana, can not be granted by this Court, especially when the failure of the Court *a qua* to grant same is not assigned as error.

May It Please the Court:

This is a suit of the Liverpool and London and Globe Insurance Company, a corporation organized under the laws of the State of New York and having a legal domicile and doing business in the State of Louisiana, to **cancel** an assessment against it on the capital employed by it in Louisiana. The amount of the capital so employed was arrived at by listing the amount of cash on hand and the amount of credits, bills receivable, etc. The amount of the assessment on "cash on hand" is not contested, but it is sought to cancel the assessment on credits, bills receivable, etc.

The trial Court and the Supreme Court of Louisiana maintained the assessment on the ground that the credits growing out of business done in Louisiana were a part of the capital of the company invested in that State, and were taxable therein.

From that judgment plaintiff has prosecuted a writ of error.

The assignments of error (Tr., p. 49), set up that the taxation of such credits is violative of the Fourteenth Amendment of the Constitution of the United States.

The question as to whether these credits are taxable in Louisiana is so fully discussed in the brief filed by undersigned counsel in the case of **Orient Insurance Company vs. Board of Assessors et al.**, No. 793 of this term (in connection with which this case will be argued), that we believe it unnecessary to do more than refer your Honors to that brief. In that brief the principle set out in the syllabus hereof is shown to have been sustained by this Honorable Court in numerous decisions, as well as by the highest courts of the different States and the ablest text-writers, and we feel that a repetition here would be of no service to your Honors. Therefore, we shall confine ourselves in this brief to a discussion of the proposition stated in the second paragraph of the syllabus.

The prayer of the original petition herein (Tr., p. 3), is:

“Wherefore, your petitioner prays that * * * the above-described assessment be declared to be illegal, unconstitutional and null, and that the same be ordered canceled from the assessment rolls, and for all general and equitable relief.”

Nowhere in the petition is the quantum of the assessment attacked. The trial Judge admitted testimony by which it was sought to prove the amount of these credits (over the objection of defendants' counsel (Tr., p. 13), as going to the effect. However, he refused to give any effect to same, saying, in his reasons for judgment (Tr., p. 22):

“As this is a suit to cancel and not reduce, the volume of the business is not for consideration.”

In the motion of appeal from this judgment to the Supreme Court of Louisiana (Tr., p. 22), no mention is made of the failure of the trial Judge to grant a reduction of the assessment, and the Supreme Court of Louisiana not having the question of reduction presented to it (except in argument), decided (Tr., p. 28):

“The evidence shows the amount of the assessment to be excessive, but as was very properly held by the learned Judge *a quo*, the suit is distinctly for cancellation and not for reduction of the assessment.”

In plaintiff's petition to the Supreme Court of Louisiana for a rehearing, it, for the first and only time, complains that the assessment is excessive. This complaint was made too late. The laws of Louisiana, for very obvious reasons, have made a distinction between a suit to cancel an assessment and one for reduction. A suit to reduce admits the validity of the law under which the assessment is made, and the existence and taxability of the property, but complains that there is over-valuation of the property, while a suit for cancellation denies either the existence of the property or its taxability. A suit for reduction may be cumulated **in the alternative** with a demand for cancellation, but the latter can not, under any circumstances, be converted into the former.

The syllabus of the opinion of the Court in the case at bar is (**122 La. 136**):

“A reduction of assessment can not be decreed in a suit which is distinctly and exclusively one for cancellation.”

In the case of **Travelers' Ins. Co. vs. Board et al.**, 122 La. 136, the same Court said:

"The suit of plaintiff, however, in so far as the item of loans and credits is concerned, is distinctly for cancellation, and not for reduction of assessment and, hence, no reduction of this item can be granted."

This has long been the jurisprudence of the Supreme Court of Louisiana.

In the case of **New Orleans vs. Stempel**, 175 U. S. 309 (44 Law Ed. 177), it appeared that the assessment was excessive, but your Honors said:

"So, while it would seem probable from the testimony as to the amount of personal property belonging to the estate, that the assessment may have, in fact, included the bonds, yet, upon the face of the record, the only assessment is of credits and money. **It may be a case of over-valuation of assessable property, but, under the issue presented by the pleadings, that question was not before the Court.**" (Our black-letter.)

Thus, your Honors have recognized the difference between a suit for cancellation and one for reduction and have denied a reduction of assesment in a suit for cancellation though the record disclosed the assessment to be excessive.

Not only was the issue of reduction not presented to the trial Court and the Louisiana Supreme Court, but the failure of those Courts to grant a reduction is not assigned as error here (Tr., p. 49), and, under the settled jurisprudence of this Court, can not be considered by your Honors.

We need cite no authorities to sustain this proposition.

We, therefore, respectfully submit that this Honorable Court must affirm the judgment of the learned Court below.

Respectfully submitted,

GEORGE H. TERRIBERRY,
Attorney for Board of Assessors.

H. GARLAND DUPRE,
Attorney for City of New Orleans.

HARRY P. SNEED,
Attorney for State Tax Collector.

ADDENDA.

Reply to Brief for Plaintiffs in Error.

The brief of counsel for the plaintiffs in error, both in the **Liverpool and London and Globe** and the **Orient Insurance** cases, having been served upon defendants' counsel, after their own were prepared, it becomes necessary to make reply thereto.

The argument of counsel begins on page 32 of the brief, and, on page 33, it is said:

"The witness was asked what were the gross premiums for 1905. This question was objected to, the objection referred to the merits, and a bill reserved; but no statement was made that the same objections should apply to subsequent similar questions.

"And thereafter witness proved, without any objection made, the amount of premium for 1906, being the ones at issue. It may be well that counsel recognized that the objection, if made and maintained, might operate injustice. But, if he had objected, plaintiff could, and would, have asked to amend its petition."

This statement of counsel is not borne out by the record. (**Liverpool and London and Globe Ins. Co. vs. Board of Assessors et al.**, No. 92, p. 13):

By Mr. Hall:

Q. What were the entire premiums for the gross business of that company during the year 1905, in the entire State of Louisiana?

By Mr. Dupre:

"May it please the Court: I object, on behalf of my colleagues and myself, for the reason that this is a suit for the cancellation of the assessment. It is immaterial what is the total amount earned in the State during that year."

By the Court:

"I will admit the evidence and **transfer the objection to the merits.**"

To which ruling Mr. Dupre excepts and reserves this note in lieu of a formal bill of exceptions.

By the Witness:

"The total returns for the company in the State of Louisiana, during 1905, as sworn to before the State, was \$15,563.36."

By Mr. Hall:

Q. Have your returns been made for 1906?

A. **No, they have not; our books are not yet closed.**

Q. To the best of your knowledge and belief, will the premiums for 1906 be greater or less than for 1905?

A. **From my observation, I think** they will be slightly decreased as compared with the previous year.

On this evidence counsel boldly asserts that the assessment is sixty times the value of the property. Granting, for the sake of argument, that this suit was one for reduction, it would be dismissed, as **plaintiff has failed to make out a case.** The statement that plaintiff "could, and would, have asked leave to amend," that is,

to insert a cause of action and add a prayer for reduction, must have been made without thought that this testimony was taken January 2, 1907, and plaintiff's right to sue for a reduction had been barred by over two months—i. e., since November 1, 1906.

II.

Plaintiff's Brief, Page 34.

The cases cited by counsel for plaintiffs in error under this heading do not uphold his contention, as will appear upon even a cursory reading. In the case first cited, **11 Wall. 429**, it is said:

“Where there is jurisdiction neither as to the person nor property, the imposition of a tax would be **ultra vires** and void,” etc.

No one will quarrel with this proposition, nor with the next, **118 U. S. 385**:

“All rights over which the sovereign power of a State extends are objects of taxation.”

But is there any doubt that the sovereign power of the State of Louisiana extends over these credits? The creditor has a business domicile in Louisiana and the debtor lives there. The credit in the hands of the debtor can be seized. The writs of seizure would issue either from a Louisiana Court or from a Federal Court therein situated. It can not be said that property within the reach of a Sheriff or constable is beyond the power of the sovereign in whose name and by whose authority the officer acts.

The next citation by counsel is the **Foreign Held Bonds case, 15 Wall. 300**. Its inapplicability is manifest. In that case the State of Pennsylvania attempted to make a corporation pay taxes **on the money it owed**. The Court said:

“All property there can be in the nature of things in debts of corporations, belongs to the creditors to whom they are payable, and follow their domicile wherever they may be.”

“Debts of corporations” mean debts **due by** corporations, not debts due to (credits of) corporations. The bonds taxed in that case were issued by the railroad company and held, perhaps, all over the world. The owners of those credits were not even constructively in the State of Pennsylvania, and it ought to stand to reason that these bonds could not be reached for purposes of taxation by assessing them to the debtor railroad and expect the railroad to pay the taxes and recoup itself from the interest due on the bonds. Besides, these bonds were specialties and taxable where found. The credits in the cases at bar have not been reduced to the form of specialties, and not even the **evidences** of the credits have been removed from the State of their origin.

The decision in **Kirtland vs. Hotchkiss, 100 U. S. 491**, recognizes that “for the purposes of taxation, a debt has its situs at the residence of the creditor, and may be there taxed,” but the decision nowhere intimates that credits of the kind here assessed are not taxable in the State of their origin. One of the tests of taxation was applied to that case, that of control of the person. This Court, by a happy generalization, which has been adopted

by plaintiffs in error, has decided that the subjects of taxation are "persons, property and business." Submitted to that test, we show in the case at bar:

1. The property is in the State of Louisiana.
2. The business is in the State of Louisiana.
3. The person is, at least constructively, in the State of Louisiana.

We feel it unnecessary to follow each of the cases cited by opposing counsel, for their inapplicability to these cases at bar so far as plaintiff's contention is concerned, is apparent in most instances from the excerpts. In all of them, except the overruled Louisiana decisions, a reading of the cases themselves will show that they are not adverse to our contention, and several of them absolutely uphold it, as is shown by our brief in the **Orient cases**.

Passing to page 49 of opposing counsel's brief, we deny counsel's statement that the opinion in the **General Electric case** is that of one Judge. There were two Justices who concurred in the opinion, making the decision by a divided Court of three to two. However the Justices may have divided on the questions there and here at issue, the decision in that case, as well as in this, is the decision of the Supreme Court of the State of Louisiana, and, in so far as it interprets the Constitution and laws of that State, is binding upon this Court.

Counsel's assumption that the concurrence of their Honors, Mr. Justice Land and Mr. Justice Nicholls, was based upon a misapprehension of the facts, apart from its insinuation that these officers were derelict in their duty, is absolutely without warrant. On the same day

the decision in the **General Electric case** was handed down, the Court rendered an opinion in the case of **National Insurance Company vs. Board of Assessors et al.**, 121 La. 108, an opinion almost as lengthy and equally as well studied as that in the **General Electric case**. The salient facts in the **National case** were identical with those in the present case (**Liverpool & London & Globe Insurance Company**) and the same Justices concurred and dissented in each. There were, at the same time, a large number of these insurance cases argued before the Supreme Court of Louisiana, and to opposing counsel's able efforts were added those of some of the most eminent members of the Louisiana Bar. Only the exigencies of a desperate situation could provoke this unwarranted attack upon the dignity and fidelity of the Supreme Court of Louisiana.

Passing the first paragraph of page 50, because the interpretation there attacked, having been made by the State's highest Court is binding upon your Honors, we come to the following remarkable assertions:

"The opinion, therefore, rests:

"**First.** Upon the firm conviction of one Judge—a conviction apparently largely the result of a desire to benefit the fisc, he stating:

" 'The State imposes this tax because of her need of the revenue to be derived from it,' etc. (**Liverpool, Tr.**, p. 43.)

"**Second.** Upon the acquiescence of another Judge in the result.

"**Third.** Upon the assumption by a third Judge that insurance premiums due by Louisiana policyholders to a foreign corporation are the proceeds of

sale of a stock of merchandise located in the City of New Orleans."

First. The excerpt taken from Mr. Justice Provosty's opinion, with its context omitted, would lead one to believe that the learned Justice, when he said: "The State imposes this tax," etc., meant only the tax imposed upon foreign insurance companies. Nothing could be farther from his meaning. The quotation made by counsel is but a part of a sentence. Mr. Justice Provosty said (Liverpool, Tr., p. 31):

"The State imposes this tax because of her need of the revenue to be derived from it; she extends to the business the protection of her laws, and seeks to make the business bear its just proportion of taxation. The situation would be, we repeat, unfortunate—not to say deplorable—if the State were left no choice between having to forego this needed revenue, or else handicapping with this tax the business of her own citizens and home corporations in their competition with foreigners for the business to be done here."

It is thus apparent that when the learned Justice says: "The State imposes this tax because of her need of the revenue to be derived from it" he does not refer merely to foreign corporations, but to the tax announced by the act to be binding upon all alike.

Second. Counsel here refers to Mr. Justice Nicholls, and insinuates that this Justice had no positive opinion on the subject. This is best answered by a reference to his Honor's opinion in the case of **Metropolitan Insurance Company vs. New Orleans**, 115 La. 698, which

opinion was acquiesced in by this Honorable Court (205 U. S. 365).

Third. As stated above, the **National Insurance** case was decided on the same day as the **General Electric** case, and the facts in that case were almost identical with those in the present **Liverpool** case. It was impossible that the Justice should not know the difference between a contract of fire insurance and that for the sale of a dynamo.

III.

Under this heading, learned counsel persists in his attempt to differentiate the case at bar from that of the **General Electric Company**. While there is a difference in the business of selling electrical apparatus and in selling insurance, the underlying principle justifying the taxation in the State of their origin of credits growing out of business done there, is the same. Whatever differences may exist can only be prejudicial to plaintiff's cause, for the **General Electric Company** being a foreign manufacturing and mercantile corporation, the credits growing out of its business in Louisiana might be protected from taxation in that State by the Interstate Commerce clause. Plaintiffs in error are without its protection.

Counsel says, on page 56:

"Now, a very significant fact is that upon the issuance of a policy, the premium is not earned."

But it is also significant that after thirty or sixty days some premium is earned, the amount of which, or its proportion to a yearly premium, is a matter with which we

are not here concerned. The **Liverpool case** is a suit for cancellation exclusively; in the others the right to sue for a reduction is barred by the statute.

IV, V, VI.

We admit the over-valuation of the property herein taxed, but submit that the provisions of Act 170 of 1898, and especially Section 26 thereof (*Orient* brief, p. 37), offered every facility to plaintiffs to have these assessments reduced. The estoppels pleaded in the answer were not urged nor passed upon, and the citation of **Wright vs. Georgia, 207 U. S. 138** does not apply. Besides this, the revenue law of Louisiana provides for a notice of the tax and the notice was given.

Plaintiff's contention that the refusal of the Supreme Court of Louisiana to reduce these assessments, notwithstanding the laches of plaintiffs (in the **Orient cases**) in failing to enter suit within the time prescribed by statute, acts to deprive plaintiff of its property without due process of law, is without foundation. No matter how excessive the assessments; no matter if they were merely a matter of guess-work; no matter even if the assessors were corrupt (which is not charged); if the plaintiffs saw fit not to avail themselves of the remedy so clearly expressed by the statute, they can not be said to have been denied due process of law. Our own citizens are bound by this section of the law, which limits their right to seek a reduction of assessment to November 1st of the year in which the assessment is made. Can this foreign corporation, this artificial creation of the laws of another State, which only through comity has been

allowed to enter Louisiana at all, demand greater privileges and immunities than our own citizens?

Plaintiffs in these cases pinned their faith to their counsel's opinion that credits of foreign insurance corporations growing out of business done in Louisiana were not taxable by that State, in spite of the plain words of the statute to the contrary. Instead of seeking a reduction, plaintiff in the **Liverpool case** sought only a cancellation. Plaintiffs, in the other cases, were ~~not~~ content to quietly defy the authority of the State of Louisiana until the activity of the tax collecting department of the State and its counsel forced them into court. They waited too long. Their right to seek a reduction had been barred by the limitation set out in the statute, and their demand for cancellation was, and is, without merit, for the State of Louisiana has the right to tax "persons, property or business within its jurisdiction."

"Now, to the existence of the States, themselves, necessary to the existence of the United States, the power of taxation is indispensable. It was exercised by the colonies; and, when the colonies became States, both before and after the formation of the Confederation, it was exercised by the new governments. * * *

In respect, however, to **property, business and persons**, within their respective limits, their (the States') power of taxation remained and remains entire. * * * The extent to which it shall be exercised, the subjects upon which it shall be exercised, and the mode in which it shall be exercised, are all equally within the discretion of the Legislatures to which the State commit the exercise of power. That discretion is restrained only by the will of the people expressed in the State Constitutions or through elections, and by the conditions that

it must not be so used as to burden or embarrass the operations of the National Government."

Mr. Chief Justice Chase, in **Lane vs. Oregon**, 74 U. S. (7 Wall.) 71; 143 U. S. 192; 11 Pet. 420; 100 U. S. 491; 4 Wheat. 316; 2 Wall. 200; hundreds of other cases cited in **L. R. A. Digest**, pp. 5472 to 5475.

It will be in the nature of a hardship for these plaintiffs to have to pay taxes on over-valued property, but that hardship is of their own making, not ours. And, as a learned English Judge has said:

"A Court has no right to strain the law because it causes hardship."

"The action of assessing officers being judicial in character, their judgments in cases within their jurisdiction are not open to collateral attack. **If not corrected by some mode pointed out by statute they are conclusive, whatever errors may have been committed in the assessment.**"

Stanley vs. Sprs., 121 U. S. 535.

To affirm these judgments is to compel each of plaintiffs in error to pay a moderate sum of money to the State of Louisiana.

To reverse these judgments is to deny to the State of Louisiana its greatest attribute of sovereignty—the right to tax "persons, property and business within its jurisdiction."

Respectfully submitted,

GEORGE H. TERRIBERRY,

H. GARLAND DUPRE,

HARRY P. SNEED,

Of Counsel.



FILED.

APR 18 1911

Supreme Court of the United States

JAMES H. MCKENNEY,
CLERK.

OCTOBER TERM, 1910

No. 92

LIVERPOOL AND LONDON AND GLOBE
INSURANCE COMPANY,

Plaintiff in Error,

vs.

THE BOARD OF ASSESSORS FOR THE PARISH
OF ORLEANS, *et al.*,

Defendants in Error.

No. 397

ORIENT INSURANCE COMPANY, *et al.*,

Plaintiffs in Error,

vs.

THE BOARD OF ASSESSORS FOR THE PARISH
OF ORLEANS, *et al.*,

Defendants in Error.

Cases Consolidated Under No. 92

Additional Brief for Plaintiffs in Error.

STATEMENT.

The taxes levied in these cases are neither license taxes nor occupation taxes. All of the plaintiffs in error pay license taxes based upon a return of the entire volume of premiums collected therein, made to the Secretary of State under a statute which requires every Insurance Company doing business in Louisiana, on or before March 1st of each year, to render to the Secretary of State a report of its condition upon the preceding 31st day of December, stating therein, in detail, its assets and liabilities on that date, the amount and character of business transacted in the State, the moneys received and expended

during the year, and such other necessary information as might be required by such Secretary of State.

The taxes here demanded are assessed and levied under another Statute raising taxes upon "All property situated in the State of Louisiana." (Acts of 1898, No. 170.) This Act is in no sense a condition imposed on foreign corporations. It is a Revenue Act, applicable to all taxpayers. It provides "that, it is made the duty of the Tax Assessors, . . . to place on the assessment list all "property subject to taxation, including merchandise or "stock in trade **on hand at the date of listing** (black letter ours) . . . and no property shall be twice "taxed in the same year; and, provided further, that in "assessing mercantile firms the true intent and purpose "of this Act shall be held to mean the placing of such "value upon the stock in trade, all cash, whether borrowed or not, money at interest, open accounts, credits, "etc., as will represent in their aggregate a fair average on the capital employed in the business of the party "or parties to be assessed, and this shall apply with equal "force to any person or persons representing in this State "business interests that may claim a domicile elsewhere, "the intent and purpose being that no non-resident, either "by himself or through any agent, shall transact business here without paying to the State a corresponding "tax with that exacted of its own citizens; and all bills "receivable, obligations or credits arising from the business done in this State, are hereby declared assessable "within this State at the business domicile of said non-resident, his agent or representative."

Act No. 170, of 1898, Section 7.

In this case the taxing officers did not undertake to ascertain the credits, or money on hand at the date of listing. It is admitted that they made no examination whatever of the then status of the plaintiffs' business.

Instead of assessing the credits or money on hand ap-

pertaining to the business done by the companies—plaintiffs in error—the taxing officers took the report made to the Secretary of State showing all moneys received during the entire year, divided the amount of such receipts in half, apportioned one-twelfth thereof as being moneys on hand, and the other eleven-twelfths as credits in course of collection.

Orient Transcript, p. 11.

It was shown by the undisputed testimony that the cash on hand, as well as the credits existing at the time for listing property, for premiums upon policies, written, or for such premiums in the hands of the agents, was very different from and much less than the one-half of the business of the year, so much so that the courts trying the cases have held that the assessments were guess work and grossly excessive.

Liverpool Transcript, p. 28.

Orient Transcript, p. 62.

In an opinion in the latter case, which is more elaborate, the Supreme Court of Louisiana says: "The assessments "are grossly excessive. So much so that it is manifest "they were the result of mere guess work; as indeed is "testified to by the one member of the Board of Assessors. "More than this, the Board of Assessors were furnished "by the plaintiff with correct returns for the years 1907 "and 1908."

Orient Transcript, p. 62.

The Court, however, refused to grant any relief, except as to the taxes for 1908, on the ground that the suits pending were for a cancellation of the assessments, and not for a reduction thereof.

We insist that this action of the Court was error. It seeks to take the property of Plaintiffs in error, without

due process of law, and denies to them the equal protection of the law, in this:

1st. That credits, such as are claimed to exist in this case, have no **situs** in Louisiana, and can not be taxed therein.

2nd. That the assessments made were void and should be cancelled, because they did not embrace, nor were they made of the credits claimed to exist, but of collections made and not in the State.

3rd. That the holding of the remedy sought to be only an application for reduction and not for cancellation, and refusing relief on this ground, denies to plaintiffs in error their rights under the Fourteenth Amendment of the Constitution of the United States.

I.

THE CREDITS SOUGHT TO BE TAXED HAVE NO SITUS IN LOUISIANA.

The unbroken line of authorities in Louisiana, until the decisions in the present cases, had established **situs** of debts as being at the domicile of the creditors, certainly unless such debts were represented by some tangible symbol, or form which could be handled and transferred by an assignment, endorsement or delivery of such tangible symbol.

See Principal Brief, pp. 42-47.

We insist that a mere sum due by open account, where owed to a non-resident, has **situs** alone at the domicile of

the non-resident creditor, especially when the same does not represent the money value of tangible property constituting a stock of goods which has been the subject of bargain and sale in the course of a regular business conducted in this State.

There is nothing in an open account to which the law of the State can attach as property, so as to give such open account *situs* in a State other than the domicile of the creditor.

It is settled that the residence of the debtor does not give an open account ~~✕~~ any such *situs* and can not be made the basis to give it any such *situs*.

State Taxes on Foreign Holding Bonds, 15 Wallace 300-319.

Whenever an indebtedness due to a non-resident has been held to be capable of being given *situs* in a State other than that of the residence of the creditor, it has been where there was a tangible evidence representing such debt, or a valuable interest in property located in the State securing such debt (such as a mortgage interest in lands), or where the non-resident had in the hands of a resident representative tangible property, *situs* of which for purposes of taxation would have been within such State, and this property had merely been converted into a credit which the agent was to collect in the State and either use in replacing the stock or remit to the non-resident as the proceeds of such tangible property, As cases which clearly show what has been deemed *situs* sufficient to warrant taxation in jurisdictions other than the domicile of the non-resident creditor, compare

**Taxes on Foreign Bonds, 15 Wallace 300-319;
New Orleans vs. Stempel, 195 U. S., p. 309;
Buck vs. Beach, 209 U. S., p. 392.**

In this case, if the premiums due by policy-holders be

taken as the credits sought to be taxed, these premiums were given, not in consideration of the purchase or sale of any taxable property located in the State of Louisiana, sold to resident debtors, the proceeds of which stood for such tangible property in the business, but were solely a sum paid as the consideration of a personal contract, evidencing obligations owed by said non-resident insurance companies, which were only contingent liabilities of the Insurance Companies in the hands of the policy-holders, which are not taxed under the laws of Louisiana, and not considered property in their hands, and which certainly never were existent as obligations prior to their coming into the hands of the policy-holders, as it took the making of the contract of insurance to give to such liability existence and being.

The policy holder gives no evidence of any indebtedness, but under the admitted facts of this record has a very indefinite liability even for the premium. If he does not pay it within a certain limited time, the policy is cancelled, and all he owes in law is the earned part of the premium, which in point of practice is never collected.

Liverpool Transcript, p. 17.

We insist that considering these premiums as due directly to the Company, and as being the credits intended to be reached by this Tax Act, as is adjudged by the Supreme Court of Louisiana, such credits are not credits which could be given *situs* by the State of Louisiana.

As to the nature of these premiums and credits, see

Orient Transcript, pp. 22, 23, 24, 28 and 36.

It would seem, however, that the credits which any Company has, are the amounts due by its agents, who are responsible for all premiums the moment they deliver the policies, and who render their accounts to the Company, and remit at periods of time later than when they

collect from the assured, and even if they have not collected from the assured; any matter of credit to the assured being an individual matter between the agent and the assured. See

Orient Transcript, pp. 22, 24, 28 and 36.

Such agency balances are due directly from the agents to the home office, and can therefore have **situs** only at the domicile of the company.

We therefore insist that these choses in action were not property in the State of Louisiana, and that the effect of the action of the taxing officers and of the decisions of the Court, is the taxing of property outside of the State in violation of the Fourteenth Amendment of the Constitution of the United States.

Delaware L., etc., R. R. Co., vs. Pennsylvania, 198

U. S. 341, 357, 358; 213

Seliger vs. Kentucky, ~~207~~ U. S., 200, 206.

II.

NO ASSESSMENT WAS MADE ON THE CREDITS CLAIMED TO BE IN LOUISIANA, BUT ON PROPERTY OF THE COMPANY LOCATED OUT OF THE STATE.

We further insist, however, that the Tax Assessors made no effort to tax, and did not levy a tax upon, the credits within the State. Assuming such credits to be within the State, they deliberately passed them by, and levied an assessment upon a different thing, to wit, the moneys which had been collected and transmitted outside

of the State, making no effort to separate what was then within the State.

Had they intended to assess the credits which existed, they should not have gone to the Secretary of State's office and taken the return of moneys collected for the year. Certainly as to any amounts, in excess of the par values of the existing credits in the State, they were assessing as a credit in the State something which was no longer a credit, but a collection which had been removed out of the State.

Let us illustrate:

The Assessors took one-half of the collections for money reported as having been received from the entire year's business, assumed that one-twelfth of said amount was moneys in hand in the State, and the balance credits still due to the Insurance Company. The undisputed testimony shows that not more than one-twelfth remains uncollected, and the moneys are all either merged into the individual bank accounts of the agents and taxed to them or actually out of the State. Eleven-twelfths of this sum, therefore, represents as totally a different **thing** from the credits then in the State, as if the Tax Assessors had taken an asset known to be in another State and valued that asset, called it a credit, and put it on the Tax Assessor's list.

As shown by the undisputed testimony in this case, the great bulk of these dollars were not credits due from citizens of Louisiana at the time, but were moneys in the coffers of the companies, in the respective States of their domiciles.

The taxation of these dollars, under the head of credits, was just as much the taxation of property out of the State, as if the dollars had been barrels of sugar, and as if the Assessors had assessed twelve thousand barrels of sugar

against one of these companies as property held by it in Louisiana when it held one thousand barrels of sugar in Louisiana and eleven thousand barrels of sugar in New York, which, having been once in Louisiana, before the arrival of the time fixed for listing property for taxation, had been removed permanently from the State of Louisiana to New York.

An attack upon such an assessment is not an effort to reduce the value of the property in Louisiana which has been over-valued, but is an application to cancel the assessment as to the property outside of Louisiana regardless of what its value is, and to leave the value of any property ascertained to be in Louisiana untouched.

**Delaware, L., etc., R. R. Co. vs. Pennsylvania, 198
U. S., 341, 357, 358; 213
Seliger vs. Kentucky, ~~207~~ U. S., 200, 206.**

If the thing of value of which the assessment is made, and on which the tax is levied, exists as property outside of the State, and not within it, then the Act of the State through her taxing officers, in taxing it, is a taking of property by the State without due process of law, and a denial of the equal protection of the laws, in violation of the Fourteenth Amendment of the Constitution of the United States.

Raymond vs. Chicago Traction Co., 205⁴ U. S., 26, 36.

III.

THE JUDGMENT OF THE SUPREME COURT OF LOUISIANA DENIED TO PLAINTIFFS IN ER- ROR THE PROTECTION OF THE FOURTEENTH AMENDMENT.

If the judgment of the Supreme Court of Louisiana per-

mits the levying of the tax on property outside of the State, the judgment of the Court is a like taking of property without due process of law, and a denial of the equal protection of the laws on the part of the State.

A State Court may keep within the letter of the Statute prescribing forms of procedure, and give parties interested the fullest opportunity to be heard, and yet its action may be a violation of the Fourteenth Amendment of the Constitution of the United States.

Chicago B. & Q. R'd. vs. Chicago, 166 U. S. 226-241.

It is a play upon words to say, because the assessment is stated to be generally on credits, that if the result of the application reduces the amount of the tax, it is therefore necessarily a proceeding for reduction, and not a proceeding for cancellation.

If the reduction results from a finding that a part of the things taxed, is not taxable because located outside of the State, it is as much a cancellation, **pro tanto**, as if it had been found that the entire thing taxed as credits was outside of the State, and therefore not taxable.

It can easily be perceived that values, whether excessive or not, cut no figure in the result reached; but the question of the taxability of the thing listed, or its being outside of the jurisdiction of the taxing power, is the whole question at issue.

The judgment of the Court, therefore, which by disposing of the matter upon the erroneous theory, that the application is one for reduction, and therefore can not be considered under the law of the State, thereby suffers taxes to rest upon property outside of the jurisdiction of the State, is an effective denial by the State through one of its agencies of due process of law and of the equal protection of the laws.

The laws of Louisiana, and the very Tax Act, now under consideration, provide that all persons, natural, artificial, resident or non-resident, shall be treated as one class and classed alike in regard to the taxation of the property including credits. It contemplates taxing only that "on hand at the date of listing."

See Acts 1898, No. 170.

The Supreme Court of Louisiana finds that in respect to these defendants these assessments were not made by any attempt to value this property, or to deal with it as like property of other taxpayers; but that these sums assessed against these non-resident corporations as credits have been assessed by pure guess work, and that by reason thereof they are grossly excessive and out of all harmony to the assessments of other taxpayers holding like taxable property.

We therefore respectfully insist that the action of the taxing officers of the State in treating these taxpayers in this manner is a denial to them of the equal protection of the law and a taking of their property without due process of law.

Raymond vs. Traction Co., 207 U. S., pp. 26-36.

We insist that where their assessment is made in such manner that is violative of law and where the Assessors in making assessment are acting in violation of the Fourteenth Amendment of the Constitution of the United States, this is not the case of an assessment lawfully made, which is too high, or which inadvertently, or by error of judgment, embraces at its true value certain property claimed to be within the State, but which is found to be out of the State, but that it is an unlawful effort to exercise the powers conferred in respect to making assessments, without any regard to whether the method of making same is violative of the Supreme Law, to-wit: The Constitution of the United States, or not;

that this renders the entire action of the Assessors invalid, and that any duty resting upon a taxpayer to pay any sum, or offer to pay it, will arise, not by the virtue of any validity of the assessment, but only from the duty, on his part, to pay what he concedes to be due, as a condition to having the entire assessment enjoined.

The Supreme Court of Louisiana, by its judgment, has refused to give effect to this right of the defendants, has refused to consider the proceedings as properly involving cancellation, and only as involving reduction; has declined to consider that this action on the part of the Assessors, after it has found the facts in our favor, would vitiate the assessment, and has therefore, by its judgment, denied to these defendants their rights under the Fourteenth Amendment to the Constitution of the United States, and is denying to them the equal protection of the laws, and permitting their property to be taken without due process of law.

Chicago D. & Q. R'd. vs. Chicago, 166 U. S., 226-241.

ALEX. C. KING,

Of Counsel for Plaintiffs in Error.

HALL, MONROE & LEMANN,

KING & SPALDING
and UNDERWOOD,

Attorneys for Plaintiffs in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 92.

LIVERPOOL AND LONDON AND GLOBE
INSURANCE COMPANY OF NEW YORK,
PLAINTIFF IN ERROR,

versus

THE BOARD OF ASSESSORS FOR THE
PARISH OF ORLEANS, THE CITY OF
NEW ORLEANS AND THE STATE TAX
COLLECTOR FOR THE FIRST DISTRICT
OF THE CITY OF NEW ORLEANS.

No. 397.

ORIENT INSURANCE COMPANY ET AL.,
PLAINTIFFS IN ERROR,

versus

THE BOARD OF ASSESSORS FOR THE
PARISH OF ORLEANS, THE CITY OF
NEW ORLEANS AND JOHN FITZPAT-
RICK, STATE TAX COLLECTOR.

Cases Consolidated Under the No. 92.

REPLY BRIEF FOR PLAINTIFFS IN ERROR.

May it Please the Court:

The tax from which relief is sought in these cases is a *property* and not a license tax. Act No. 170 of 1898, under which this tax is claimed, is entitled:

“An act to provide an annual revenue for the State of Louisiana by the levying of annual taxes upon all *property* not exempted from taxation and by prescribing methods of assessing and collecting the same and of enforcing payment thereof in the several parishes of the State, and setting forth the purposes for which said levy is made.” (Italics ours.)

The enacting clause of the act reads:

“*Section 1. Be it enacted by the General Assembly of the State of Louisiana, That for the calendar year, A. D., one thousand eight hundred and ninety-eight (1898), and for each succeeding calendar year, there are hereby levied annual taxes amounting in the aggregate to six mills on the dollar of the assessed valuation of all property situated within the State of Louisiana, except such as is expressly exempted from taxation by law.*” (Italics ours.)

The act then goes on to describe what is included in the term “property.”

The act has been uniformly construed by the Su-

preme Court of Louisiana in accordance with its terms, as levying a tax *on property situated within the State*. It was so construed by the Supreme Court of Louisiana in the decisions from which the present appeals have been presented. See Liverpool Transcript, p. 37, where the Supreme Court of Louisiana said:

“It would seem the sole question that could arise in connection with the taxability of the credits involved in this case would be whether or not they are situated in this State.”

The act has, moreover, been uniformly considered and construed as a property tax in the several cases in which its application has been before your Honors.

See *New Orleans vs. Stempel*, 175 U. S., 309; *State Board of Assessors vs. Comptoir National D'Escompte*, 191 U. S., 388; *Metropolitan Life Insurance Co. vs. Board of Assessors*, 205 U. S., 395; *New York Life Insurance Co. vs. Board of Assessors*, 216 U. S., 517, at 523.

Accordingly, the primary issue presented by the present cases is whether the debts due on open accounts to foreign fire insurance companies by their agents residing in Louisiana, for premiums collected by those agents, are property within Louisiana, subject to taxation there.

This was recognized as the issue by the Supreme Court of Louisiana in the decisions from which these appeals have been taken.

The brief of defendants in error, however, superficially confuses this issue by the citation of authorities which are in fact without application. Thus, the major portion of their brief is devoted to the quotation of authorities to the effect that insurance companies are foreign corporations, that as such they do business subject to the conditions imposed by the State, and that among those conditions may be the requirement of a *license or privilege tax*.

None of these propositions need be denied. But none of them have any application to the present cases. There is no question here of a license or privilege tax. There is no question of the right of the State to exact a fee of a foreign corporation for the privilege of doing business within the State. The law under which the present tax is claimed applies as much to individuals and to partnerships as to corporations. (See Sec. 7, Act 170 of 1898.) These are not cases of license or privilege taxes. If they were, the question of *situs* of property in the State would be unimportant and the whole elaborate discussion of the subject which the Supreme Court of Louisiana thought it necessary to go into and upon which is based its decision would have been superfluous. So would the discussions of your Honors in the cases heretofore presented to this court under this law, in all of which the decisions turned upon the presence of property in the State.

License taxes in Louisiana are provided for by special laws and are collected by special machinery

not involving any assessment of property within the State and not administered by or through any assessors. These license laws have special provision for insurance companies, including foreign fire insurance companies, by which these companies are made to pay taxes upon the gross amount of their premiums. See Act 171 of 1898, entitled:

“An act to levy, collect, and enforce payment of an annual *license tax* upon all persons, associations of persons, or business firms and corporations, pursuing any trade, profession, vocation, calling, or business, except those who are expressly exempted from such license tax by Article 229 of the Constitution, and prescribing the mode and method in which certain persons subject to license shall make report of their business.” (Italics ours.)

Section 7 of *that act* requires each insurance company to file with the Secretary of State, on or before the 1st day of March, in each year, a sworn statement showing the amount and character of business transacted in the State and the moneys received and expended during the year.

The second paragraph of section 7 provides that the license of the company shall be based upon the statement filed with the Secretary of State, certifying to the amount of business transacted during the year.

Section 9 of the act provides that every fire insurance company, whether located or domiciled or operating here, shall pay a *license* for each com-

pany represented, which *shall be based on the gross annual amount of premiums on all risks* located within this State and upon risks located in other States or foreign countries, upon which no license tax has been paid therein.

It thus appears that every fire insurance company doing business in the State of Louisiana is made to pay and does pay an annual tax for the privilege of doing business in the State, which license tax is properly graded by the *total amount of premiums* collected during the year.

The present cases involve an attempt by the taxing authorities to collect not the *license* taxes provided for in Act 171 of 1898, which have been promptly and regularly paid, by plaintiffs in error, but a *property* tax under Act 170 of 1898, upon the theory that the insurance companies have property within the State.

As the tax here involved is a *property* tax, dependent for its validity upon the presence of the property taxed within the State, the authorities cited on pages 5 to 21 of the brief of defendants in error are all irrevelant, since they all tend to establish simply the right of a State to exact a license fee, and none of them throw any light whatsoever upon the question of *situs* of property which is presented by the present cases.

Moreover, it is settled by the recent decisions of this court that the State cannot under the guise of a license tax compel a foreign corporation to pay taxes on property not within the State. Thus in

the recent case of *Southern Railway Company vs. Greene*, 216 U. S., 400, the court said at page 416:

“In the *Western Union Telegraph case* (216 U. S., 1) it was held that a State could not impose a tax upon an interstate commerce corporation as a condition of its right to do domestic business within the State, which tax included within its scope the entire capital of the corporation without as well as within the borders of the State. The Kansas statute was sought to be sustained as a legal exaction for the privilege of doing domestic business within the State. It was held invalid because it violated the right secured by the Constitution of the United States giving to Congress the exclusive power to regulate interstate commerce, and because it violated the due process clause of the Federal Constitution in undertaking to make the payment of a tax upon property beyond the borders of the State a condition of doing domestic business within the State. In that case the Fourteenth Amendment was directly applied in the due process feature.” (Italics ours.)

And in the recently decided *Corporation Tax Cases* this court said, again referring to the *Western Union Telegraph case*:

“This court held, looking through forms and reaching the substance of the thing, that the tax thus imposed was in reality a tax upon the right to do interstate commerce within the State and an undertaking to tax property beyond the limits of the State; that whatever the declared purpose,

when reasonably interpreted, the necessary operation and effect of the Act in question was to burden interstate commerce and to tax property beyond the jurisdiction of the State and it was therefore invalid." (Italics ours.)

Hence even if the tax sought to be imposed in the present cases were *in form* a license tax—which it is not—it could not be sustained, if *in substance and effect* it was a tax upon property beyond the borders of the State. No theory or argument about the right of a State to affix such conditions as it pleases to the doing of business by foreign corporations can alter the fundamental inquiry which these cases present, namely:

"Are the debts of the agents to the foreign companies, payable outside the State, unevicenced by any concrete form and representing no investment of capital, property within the State?"

If they are not, these cases must be controlled by the decision in *Western Union Telegraph Co. vs. Kansas*, 216 U. S., 1, as explained in *Southern Railway Co. vs. Greene*, 216 U. S., 400, and the *Corporation Tax Cases*.

The decision in *Liverpool Ins. Co. vs. Massachusetts*, 10 Wall., 566, upon which counsel for defendants in error apparently specially rely (their brief, pp. 10, 11, 18) is not only controlled by the later decisions of this Court, but is absolutely deprived of any authority by the fact that

it arose before the *Fourteenth Amendment* had become part of the *Federal Constitution*. See *Southern Railway Co. vs. Greene*, 216 U. S., 400, at 414, where this court for that reason declined to attach any authority to the parallel case of *Ducat vs. Chicago*, 10 Wall., 410.

II.

Defendants in error have not cited any authorities supporting the proposition that debts of the sort involved here, unevicenced by any concrete form, can be taxed where the debtor resides. The cases cited in their brief tending to show the establishment of a *situs* for taxation of personal property away from the domicile of the owner are almost without exception cases of *tangible* personal property. But we have never denied that *tangible* personal property may be taxed where it is permanently physically found. Hence the discussion in the brief of defendants in error of the inapplicability of the doctrine of "*mobilia sequuntur personam*" to *tangible* personal property is beside the point and superfluous.

The question in the present cases is as to the *situs*, as to taxation, of an intangible debt. Defendants in error argue that the long and unbroken line of authorities (a further collection of which will be found in an addendum hereto) beginning with the *Foreign-Held Bonds* case, in 15 Wall., 300, upholding the common-sense doctrine that all the property that there is in a debt,

is in the nature of things with the creditor and with him alone, has been superseded by later cases.

The only authorities cited by defendants in error as tending to the support of this contention and opposed to the numerous cases collected in our original brief and the addendum hereto, are two cases from Georgia, one from a New York Appellate Court, and certain recent decisions of your Honors, none of which, however, govern the cases now presented.

In all of the cases presented to your Honors heretofore and cited by defendants in error, the credits sought to be taxed were evidenced by a note or other concrete form, the presence of which has been emphasized.

See *New Orleans vs. Stempel*, 175 U. S., 309, where the Court stated its decision in the concluding sentence of the case:

“Notes and mortgages are of the same nature; and while they may not have become so generally recognized as tangible personal property, yet they have such a concrete form that we see no reason why a State may not declare that if found within its limits they shall be subject to taxation.”

In *Bristol vs. Washington County*, 177 U. S., 133, stress was laid upon the taking of notes within the taxing State, secured by mortgage on lands therein.

In *State Board of Assessors vs. Comptoir National D'Escompte*, 191 U. S., 388, at 403, it was

held that there was no inhibition in the Federal Constitution against the right of a State to tax property in the shape of credits, *where the same are evidenced by notes or obligations held within the State*, in the hands of an agent of the owner, for the purpose of collection or renewal, with a view to new loans, and carrying on such transactions as a permanent business.

In *Metropolitan Life Insurance Co. vs. Board of Assessors*, 205 U. S., 395, the Court stated the result of its decision at page 403:

“We think the State had the power to do this, and that the foreigner doing business cannot escape taxation upon his capital by removing temporarily from the State *evidences of credits in the form of notes*. Under such circumstances they have a taxable *situs* in the State of their origin.”

At page 402 the Court said:

“Here the loans were negotiated, the *notes* signed, the security taken, the interest collected, and the debts paid within the State. The *notes and securities* were in Louisiana whenever the business exigencies required them to be there.”

At page 395 the Court said in speaking of the *Stempel* and *Comptoir* cases:

“In both of these cases the written evidences of the credits were continuously present in the State, *and their presence was clearly the dominant factor in the decision.*

Here the notes, though present in the State at all times when they were needed, were not continuously present, and during the greater part of their lifetime were absent and at their owner's domicil." (Italics ours.)

The decision thus clearly proceeds upon the finding that the notes had acquired a *situs* in the State of Louisiana, where they were originally given and to which they were returned when needed, and that their temporary absences from their true home did not forfeit their *situs* there. In this respect the case is like *N. Y. Central R. R. Co. vs. Miller*, 202 U. S., 584.

In *Blackstone vs. Miller*, 188 U. S., 189, the tax enforced was upon the *privilege* of inheritance, not upon any property, and the right of New York to collect a duty was upheld because it was New York which permitted the transfer by inheritance. At page 203 the Court said:

"Both parties agree with the plain words of the law that *the tax is a tax upon the transfer, not upon the deposit*, and we need spend no time upon that." (Italics ours.)

And at page 205:

"If the transfer of the deposit necessarily depends upon and involves the law of New York for its exercise, or, in other words, if the transfer is subject to the power of the State of New York, then New York may subject the *transfer* to a tax." (Italics ours.)

That the decisions relied upon in this Court have not the effect which defendants in error seek to attribute to them, of superseding the rule in the *Foreign-Held Bonds* cases, but that on the contrary they are all to be explained by the presence of *concrete forms* representing actual *capital invested* in the State clearly appears from the latest related decision in this Court.

See *Buck vs. Beach*, 206 U. S., 392. In that case the court reviewed all the authorities, stating the result as follows (p. 407):

“As said in the above-cited case (*Foreign-Held Bonds case*), at page 320: ‘All the property there can be in the nature of things, in debts of corporations, belongs to the creditors, to whom it is payable, and follows their domicile, wherever that may be. Their debts can have no locality separate from the parties to whom they are due. This principle might be stated in many different ways, and supported by citation from numerous adjudications, but no number of authorities, and no forms of expression, could add anything to its obvious truth, which is recognized upon its simple statement.’

“The case cited in *Metropolitan Insurance Company case*, *supra*, shows that this rule is enlarged to the extent of holding that *capital, evidenced by written instruments, invested in a State*, may be taxed by the authorities of a State, although their owner is a non-resident, and such evidences of debt are temporarily outside of the State when the assessment is made. Although the lan-

guage of the opinion in the case of *State Tax on Foreign Held Bonds, supra*, has been somewhat restricted so far as regards the character of the interest of the mortgagee in the land mortgaged (*Savings, etc., Society vs. Multnomah County*, 169 U. S., 421, 428), the principle upon which the case itself was decided has not been otherwise shaken by the later cases." (Italics ours.)

In other words, the most extreme point to which the decisions have heretofore gone in this court, is to permit the taxation of *capital invested* in a State where it is evidenced by some *concrete form*. While the physical presence of the notes alone in a State where neither debtor nor creditor resides, will not itself confer jurisdiction to tax, yet the presence of some such concrete form is required *in addition* to the investment of capital in a State in order to make a credit taxable anywhere save at the domicile of the creditor.

In the cases now presented we have neither element: we have no concrete form of indebtedness; and we have no capital invested in the State.

That we have no capital invested in the State is apparent from the most superficial consideration of the situation. The insurance companies have brought no money into the State nor have they brought into it any element of taxable value. The only result of their operation in the State is a contract of insurance. Insurance is not property. It is a contingent liability, a debt. The Supreme

Court of Louisiana has itself recognized the fact and declared insurance not property.

See *Succession of Hearing*, 26 An., 326, where the court said:

“A policy of insurance is not a piece of property. It is the evidence of a contract, the contract being that a certain sum of money will be paid upon the happening of a certain event to a particular person named in the policy, or who may be the legal holder thereof.”

No individual policy-holder has ever been taxed on his fire insurance policy as an asset. In the nature of things such taxation is inconceivable.

In what way, then, could these foreign fire insurance companies be said to have brought capital into the State or to have invested capital in the State? How have they invested it? In what? Certainly not in the way in which Mrs. Stempel invested capital, in *New Orleans vs. Stempel*, 175 U. S., 309, or in which Mrs. Bristol invested it, in 177 U. S., 133, or the Comptoir National D'Escompte, in 191 U. S., 388, by sending money into the State for actual investment there. Certainly not in the way in which the Metropolitan Life Insurance Company invested it, in 205 U. S., 395, by sending part of its capital or surplus here for loans to its policy-holders and use by them in productive business.

The capital of these foreign fire insurance companies was and always has been at their respective

domiciles, *invested there*. No part of it has ever been invested in Louisiana. As pointed out in our original brief, the reserves to meet their liabilities are maintained at their domiciles. If any of the fire insurance companies had ever taken any money from their capital and surplus and instead of investing it in stocks and bonds at their domiciles had loaned it to individuals in Louisiana, and taken notes therefor, we might have a case like the *Metropolitan case*, 205 U. S., 395, but not otherwise.

It thus appears that, so far from being controlled by any decisions of this court favorable to defendants in error, the decisions and expressions of the court, taken together, indicate clearly that the debts assessed here are not property within the State of Louisiana.

Nor do the isolated decisions quoted by defendants in error from the Supreme Courts of Georgia and New York control the present cases. The doctrine of those cases has never been approved by the Supreme Court of the United States, and is inconsistent with that court's general position—that open accounts unevidenced by concrete forms are property only with the debtor, and taxable only at his domicile. But, even were those cases entitled to the approval of this court, the situation which they present is again radically different from that shown here. They, too, are instances of capital invested in a State. If the foreign fire insurance companies had ever brought into this State any commodity subject to taxation and representing a

property value and an investment of their capital, and thereafter had converted such property values and investments of capital by sales into open accounts, these cases might be affected by the decisions which defendants in error have quoted. But that is not the situation. The foreign fire insurance companies have never brought any practical element of value into the State at any time, and have never had any property within the State representing any investment of capital. The result of their course of dealings in the State has been at best a creation of a liability in them to their policyholders. In the State court cases cited by defendants in error emphasis was laid upon the fact that the merchandise for which the open accounts were due while it was in specie within the State was itself subject to taxation; whence it was argued that the mere transformation from one form to another of the capital invested in merchandise should not divest the taxing power.

Compare *People vs. Barker*, 23 N. Y. App. Div., 524, cited by defendants in error at page 20 of their brief, where the head-note reads:

“Where a foreign corporation doing business within the State sells upon credit in the State merchandise which would be taxable if in specie within the State, the transaction effects a mere transformation from one form to another of a sum invested in the State, and employed there in the current business of the corporation; and the credits represented by book accounts

kept in the State and promissory notes physically here are taxable under the laws of 1855."

In the present case the foreign fire insurance companies never had in the State of Louisiana any merchandise taxable in specie, nor did the open accounts sought to be taxed here arise from a transformation from one form to another of any sum invested in merchandise or capital within the State. The foreign fire insurance companies at no time have any capital invested in the State in the manner in which foreign corporations maintaining stocks of goods have such investment. The insurance companies bring capital into the State only to pay losses.

The same distinction exists between the present cases and the decisions of the Supreme Court of Georgia, upon which defendants in error rely, and in which the situation was precisely like that in *People vs. Barker*.

III.

There is, moreover, another distinction to be observed between the present cases and those decisions wherein the taxing power has been upheld. In all those cases, in order not to controvert the obvious common-sense justice of the rule of the *Foreign-Held Bonds case*, the credit taxed has been found to be localized by the fact that it was paid to and controlled by a resident agent, who

held the funds for investment and reinvestment, and who was regarded as the representative of his principal, thus bringing the creditor, as well as the debtor, within the jurisdiction of the taxing State. Thus, in *New Orleans v. Stempel*, 175 U. S., 309, the owner of the notes left them in Louisiana in the possession of an agent, who collected the principal and interest as they became due. In the *Comptoir case* a foreign banking company loaned money through an agent, receiving checks and collaterals which remained in the agent's hands until the transaction was closed. (191 U. S., 388). In the *Bristol case* the agent made the loans, took and kept the notes and securities, collected the interest and received payment. (177 U. S., 133). In the *Metropolitan case* the notes were taken by the agent, interest was paid to him, and the notes themselves were finally paid to the agent (205 U. S. 395).

In the present cases, however, the debts due the foreign fire insurance companies were due by the agents themselves to the companies. There were no debts due by the policy-holders to the companies through their agents. The company gave no credit to policy-holders.

See *Orient Transcript*, p. 28:

“Q. When a local agent issues a policy, what report of the issuance of that policy does he make to the home office?

A. What we term in insurance parlance a “daily report” on the day that the policy is issued.

Q. Giving the amount?

A. Yes, sir; the amount named, rate, and the amount of premium, and the number of the policy, description of its location, what it covers.

Q. Is he charged by the company with that premium?

A. Yes, sir; he is, because as far as the company is concerned it is a cash transaction absolutely, and if he gives any time on it it is his own lookout.

Q. And he collects the premium from the policyholder?

A. Yes, sir; the company has nothing to do with it."

See also *Orient Transcript*, pp. 23 and 24.

Moreover, the debts due by the agents to the companies were payable *not in Louisiana* but at the home offices of the companies at their respective domiciles to which the agents remitted by check or exchange. (See *Orient Transcript*, pp. 21, 23, 24, 35.)

The theory of localizing *credits* due to an agent cannot be applied to these cases of *debts* due by the agents. The only creditor in the State of Louisiana in any sense was the agent *individually*. He might *individually* have been assessed, and indeed the record shows that the custom in the past was to assess him individually.

See *Orient Transcript*, p. 17.

If that custom had been adhered to these cases would not have arisen. The new practice cannot be maintained on the theory of localizing credits

due an agent, since there were here no credits due the agent as agent. The agent could not be debtor and creditor at the same time. Compare *Jack vs. Walker*, 96 Fed. 578, affirmed without opinion in 100 Fed. 1006; *Myers vs. Seaburger*, 45 Ohio St. 232.

IV.

This court has shown itself more and more impressed by the injustice of double taxation—taxation of the same thing by two different jurisdictions. It was a sense of that injustice which prompted the decisions in *Delaware, L. Etc., R. R. vs. Pennsylvania*, 198 U. S. 341, and in *Union Transit Co.*, 199 U. S. 194, and the statement in *Buck vs. Beach*, 206 U. S. 392, at p. 408:

“Our decision in this case has no tendency to aid the owner of taxable property in any effort to avoid or evade proper and legitimate taxation. The presence of the notes in Indiana form no bar to the right, if it otherwise existed, of taxing the debts evidenced by the notes in Ohio. *It does, however, tend to prevent taxation in one State of property in the shape of debts not existing there, and which, if so taxed, would make double taxation almost sure, which is certainly not to be desired, and ought, wherever possible, to be prevented.*”

(Italics ours.)

The result of an affirmance of the decisions in the present cases, however, will make double taxation absolutely sure, and thus open the doors wide

to the very evil which the court has emphasized the desirability of avoiding. For it is too well established to admit of doubt that credits of the sort here sought to be assessed are taxable at the domicile of the creditors, the various foreign fire insurance companies.

See

Kirkland vs. Hotchkiss, 100 U. S., 491, and the unbroken line of authorities in support thereof.

Hence, these insurance companies are taxable in New York on these open accounts. Indeed, they are, in fact, taxed there. If they are taxable in Louisiana they are taxable and taxed twice upon the same thing! *And this in addition to bearing already their full liability for license taxes!*

The argument is made that to relieve the insurance companies of the taxes sought to be imposed in these cases would be to discriminate in their favor and against the local insurance companies domiciled within the State of Louisiana. The answer to this suggestion is obviously found in the consideration emphasized in the preceding paragraph, wherein it is pointed out that all the plaintiffs in error are taxable and taxed on these open accounts at their respective domiciles. If the tax here complained of is upheld, then so far from discriminating in favor of plaintiffs in error and against Louisiana insurance companies there will be a flagrant discrimination in favor of Louisiana companies and against plaintiffs in error; for,

while the Louisiana companies are taxed in Louisiana, and there alone, being domiciled there alone, the result of upholding the tax in these cases would be to expose plaintiffs in error to property taxation not only at their domiciles, but also in every other State where debts may be due them. And this, too, in addition to the burden of license taxation.

The whole suggestion is, moreover, met by the comment of the New Jersey Supreme Court, in *State vs. Robert Ross, Collector, etc.*, 3 Zab., 517:

"It cannot be presumed, in the absence of clear and explicit enactment that the legislature designed to weaken the bonds of the Union by discouraging commercial intercourse between the citizens of our own and other sister States. The fair and reasonable presumption is, that they designed to adopt a general principle just and beneficial in its operation, viz: To make all property in action taxable at the domicile of its owner, and to apply the same principle to the citizens of our own and all the other States. *Here it may be objected that this construction leaves the property of inhabitants of other States to the protection of our laws without being amenable to taxation. The obvious answer is, that the property of our citizens, in like circumstances, enjoys the same protection in other States, without being liable to taxation there. In both cases the taxes are paid at the domicile of the owner and the principle, being universally adopted and applied, is just and uniform in its operation.*" (Italics ours.)

VI.

The suggestion advanced by defendants in error that debts of the sort here involved, due on open account, should be considered as property where the debtor resides, because there subject to garnishment, is without logical force.

In *Harris vs. Balk*, 198 U. S., 215, where it was held that a debt might be garnisheed wherever the debtor might be served with process, the distinction was clearly recognized between power over the person of a debtor in attachment proceedings and the *situs* of a debt as property or for purposes of taxation.

See 198 U. S., 215, at p. 222.

The place where a debt may be sued upon or may be seized has no necessary logical or relevant connection with the inquiry as to where the debt is property. If this were not so, and if the analogy to the garnishment cases were to be followed to the extent indicated by the defendants in error, a debt might be taxed, as it may be garnisheed, wherever the debtor could be found. But we submit that no court would so hold. The mere fact that a debtor may be made to pay in a given jurisdiction certainly does not tend to show that his obligation to pay is *property* in that jurisdiction. On the contrary, it tends rather to show that it is an *obligation* there.

These considerations as to seizure, suit, and gar-

nishment have never been considered by any of the courts as in themselves sufficient to alter the well-established general rule as to the *situs* of debt with the creditor. If they were important considerations, then all the stress laid upon capital invested in a State would be superfluous and every individual or isolated debt would be taxable where the debtor might be found.

If the place where suit may be brought or garnishment process instituted is to be the test, then the decision in the *Foreign Held Bonds case*, 15 Wall., 300, must be repudiated; for certainly the railroad company, obligor on the bonds there, could have been sued in Pennsylvania.

It is suggested that the State where the debtor resides should have the right to tax, because it protects that debtor's property, and that protection enures to the benefit of the creditor. But the State is compensated for that protection by a tax upon the debtor's property direct. And if the suggestion were sound, then every State wherein the debtor had property might tax the debt, though neither the debtor nor the creditor had ever been there. But this, though a necessary logical sequence, is a complete *reductio ad absurdum*.

In all suggestions of this character the fallacy overlooked lies in the fact that taxes are levied upon property, not upon obligations; upon wealth, not upon poverty. It is the *credit* alone that is property; a *debt* is never property. The fact that the *debt* may be sued upon or attached in a given

jurisdiction indicates simply that the practical place to enforce an *obligation* is the place where you can compel obedience from the debtor. It does not indicate that there is any wealth in the debt in that given jurisdiction. The only way to collect payment in that jurisdiction is by resort to the tangible physical property of the debtor, which is his and not his creditor's. There is no other asset, wealth or property in that jurisdiction, and the debtor's property is already directly taxed.

VII.

Defendants in error cite, at considerable length, the decisions of this court in *Adams Express Co. vs. Ohio State Auditor*, 165 U. S., 194, and 166 U. S., 185. Those decisions relate to the taxation of franchises and have not even a remote bearing upon the question of *situs* of an intangible debt due on open account, such as is here presented. That those decisions, moreover, lend no support to an attempt of the sort presented here by a State to tax property not situated within its borders is established by the recent decision of this court in *Fargo vs. Hart*, 193 U. S., 490:

“While a State can tax property permanently within its jurisdiction, although belonging to persons domiciled elsewhere and used in commerce between the States, it cannot tax the privilege of carrying on such commerce, *nor can it tax property outside*

of its jurisdiction belonging to persons domiciled elsewhere." (Italics ours.)

See, also, *Selliger vs. Kentucky*, 213 U. S., 200.

In *Western Union Telegraph Co. vs. Kansas*, 216 U. S., at page 38, the court said:

"We need not stop to discuss at length the specific question whether the State can by any regulation make the property of the company outside of Kansas contribute directly to the support of its schools; such being the effect of the requirement that it pay into the State treasury for the benefit of the State's school fund a given per cent. of all its capital stock as a condition of its doing local business in Kansas. It is firmly established that consistently with the due process clause of the Constitution of the United States a State cannot tax property located or existing permanently beyond its limits."

See, also, *L., etc., Co. vs. Kentucky*, 188 U. S., 385, 398; *Union Transit Co. vs. Kentucky*, 199 U. S., 194, 209.

VIII.

But the illegality of the taxes sought to be collected from plaintiffs in error does not rest alone upon the fact that the property upon which they purport to be based is not within the State. If this fundamental difficulty were overcome, there would still remain the complaint based upon the character of the so-called assessments under the

guise of which the State is attempting confiscation rather than taxation. The statement of this aspect of the present cases in the original brief heretofore filed does not seem to have been sufficiently met by defendants in error to require any further abstract discussion. We invite the court's particular attention, however, to the decision in *Raymond vs. Chicago Union Traction Co.*, 207 U. S., 20, where the court said, at page 36:

“The case before us is one which the facts make exceptional. It is made entirely clear that the Board of Equalization did not equalize the assessments in the cases of these corporations, the effect of which was that they were levied upon different principle or afforded a different method from that adopted in cases of other like corporations, which property the board had assessed for the same year. It was not the mere action of individuals but under the facts herein detailed it was the action of the State through the Board. There is here no contention of illegality simply because of assessing the franchises of these corporations at a different rate from tangible property in the State, which the State might do, *Coulter vs. R. R.*, 196 U. S., 599, but it is asserted that the board assessed the franchises and other property of these companies at a different rate and by a different method from that which had been employed by the board for other corporations of the same class for that year. The result is an enormous disparity and discrimination between the various assessments upon the corporations. The most im-

portant function of the board, that of equalizing assessments, in order to carry out the provisions of the Constitution of the State in levying a tax by valuation, and so that every person shall pay a tax in proportion to the value of his, her, or its property, was, in this instance, omitted and ignored, while the board was making an assessment which it had jurisdiction to make under the laws of the State. This action resulted in an illegal discrimination which, under these facts, was the action of the State through the board." * * *

At page 38:

"A system of valuation was adopted and applied to a large class of corporations differing wholly from that applied to other corporations of the same class, and resulting in a discrimination against the *appellee of the most serious and material nature. It is not a question of mere difference of opinion as to the valuation of property, but it is a question of difference of method in the manner of assessing property of the same kind.*" (Italics ours.)

In *First National Bank vs. Albright*, 208 U. S., 548, at 552:

"Accidental inequality is one thing, intentional and systematic discrimination another."

It does not appear that the local insurance companies domiciled in Louisiana were assessed by any such guesswork as that practiced here with the assessments of the foreign companies. On the

contrary, the Liverpool Transcript, p. 20, shows that the return of the Southern Insurance Company was accepted as made, while the sworn returns of the plaintiffs in error were arbitrarily disregarded.

In *Pittsburg, Etc., R. R. Co. vs. Backus*, 154 U. S., 421, though the court could not find the facts to exist as alleged by complainant, it was assumed that a Federal question would arise upon proof that

“the individual members of the assessing board deliberately violated the obligations of their oaths of office and intentionally placed upon the property of plaintiff a valuation which they knew to be grossly in excess of that which it in fact bore, and did so with the purpose of making plaintiff bear a larger share of the burden of the support of the State government than it rightfully should.” (P. 435.)

In the present cases, not only were the assessments *guesses* and guesses far beyond the possible bounds of truth or correctness, but they were *guesses* which the assessor at the time he made them knew to be wrong (*Orient Trans.*, p. 12) and which were made in arbitrary and unexplained disregard of the sworn returns of plaintiffs in error, who were refused a hearing by the Committee on Revision of Assessments and the Board of Assessors. (See Original Brief, p. 77.)

Assessments of this character certainly are so radically null as to constitute the taking of prop-

erty without due process, within the principle laid down by *Raymond vs. Chicago Union Traction Co.*, 207 U. S., 20; *Chicago, etc., R. Co. vs. Backus*, 154 U. S., 421. They do not lose their character as the taking of property without due process, because of the possibility of appeal to the State court—for there was that possibility in *Raymond vs. Chicago, Etc., Traction Co.*, 207 U. S., 20. In that case the aggrieved party declined to avail himself of the possibility and the Supreme Court held he was not bound to. In the present cases the injured parties did what the dissenting justices in the *Raymond case* thought should have been done there, and did appeal to the State Court. That court refused relief, thus approving the methods of the Assessors.

But the State Court's decision cannot convert that into due process which is no due process.

See

Chicago, Burlington & Quincy vs. Chicago,
166 U. S., 226.

Nor can it make that into the equal protection of the laws which obviously is not the equal protection of the laws.

As illustrating, further, the radical viciousness in principle in the methods adopted by the assessors here, see:

Fargo vs. Hart, 193 U. S., 490-502:

“Assume that something is to be added for the good will of a company because it is safe, and that

the good will, or a part of it, of the express business of Indiana may be considered in assessing its property there, this is very different from measuring the good will by the capital when the facts appear as they do in this case.

“The difference is not a mere difference in valuation, *it is a difference in principle and, in our opinion, the principle adopted by the Board is wrong.* It involved an attempt to tax property beyond the jurisdiction of the State and to throw an unconstitutional burden on commerce among the States. The result has been taking of the value of the stock, as stated by the defendant, to have been 125 for 1898. The State of Indiana assessed the company for nearly twice the total good will of its business, measuring that good will by the difference between the tangible assets and the total value of the stock. The injustice grew less flagrant as the stock rose, but in the year 1901 the assessment still was nearly double what the State had a right to assess, assuming that, without transcending its constitutional power, it had a right to assess its proportion by mileage of the total good will. *We have explained why, in our opinion, this cannot fairly be treated as a mere case of over-valuation, but is an assessment made upon unconstitutional principles.*” (Italics ours.)

See, further, *C. B. & Q. R. R. Co. vs. Cole*, 75 Ill., 591, at 593:

“This assessment because of violation of that rule and consistent with no other rea-

sonable theory of valuation, cannot be the honest judgment of a majority of that board. It is an arbitrary and unreasonable valuation. * * * But whenever the board undertakes to go beyond its jurisdiction or to fix valuations through prejudice or reckless disregard to duty, in opposition to what must necessarily be the judgment of all persons of reflection, it is the duty of the Courts to interfere and protect tax-payers against the consequences of its acts. Where its jurisdiction is conceded, no more difference of opinion as to the reasonableness of its valuation will justify equitable interference; but its valuation must be the result of honest judgment and not of mere will."

See, also, *Pacific Hotel Co. vs. Lieb*, 83 Ill., 602, at 609.

"Owing to the diversity of opinion as to the value of property, it has always been held that a Court of equity will not interfere to enjoin the collection of a tax merely because the property has been assessed at a greater value than the Court would have fixed upon. Where, however, the valuation is so grossly out of the way as to show that the Assessor could not have been honest in his valuation, must reasonably have known that it was excessive, it is accepted as evidence of a fraud upon his part against the tax-payer and the Court will interpose."

IX.

If the alleged assessments made against the plaintiffs in error are constitutionally void, either because of the absence of the property from the State or because of the manner in which the so-called assessments were made, the attempt of the State to levy a tax is an attempt by the State to take property without due process of law. As such it must fail, unless some valid rule of limitation established by the State bars the complaint now made. No such rule, however, exists. That the time limit prescribed in Section 26 of Act 170 of 1898 applies only to complaints concerning the *descriptions* of the property listed and the *valuation* of the same is apparent from an inspection of the language of the section.

“Section 26: Be it further enacted, etc., That all tax-payers in the Parish of Orleans shall have the right to appear before a standing committee on assessments of the City Council of New Orleans between the 21st day of March and the 10th day of April, inclusive, of the year in which the assessments are made and in the parishes before the Board of Reviewers, as provided for in this act, during the sessions of such Board, and be heard concerning the descriptions of the property listed and the valuation of the same as assessed, and the Board of Reviewers having considered the claim for relief of the tax-payer shall either approve or disapprove the objection as pro-

vided in Section 24, and, if disapproved then the tax-payer shall have the right of testing the correctness of the assessments before courts of justice in any procedure which the Constitution and laws permit. But the action to test such correctness shall be instituted on or before the 1st day of November of the year in which the assessment is made. In all suits for the *reduction of assessments* the State collectors of the respective parishes shall be made parties." (Italics ours.)

That the time limit thus prescribed does not bar a tax predicated upon "radical defects in the assessment sufficient to operate the absolute nullity of the same," is established not only by the language of the act itself, but by the decisions quoted in the original brief (page 76), and, indeed, by the decisions of the Supreme Court of Louisiana in these very cases now before your Honors. For in these very cases not only was the point of *situs* of the debts discussed at large without reference to the time at which the suits were brought (it being evidently assumed, as it is assumed by counsel for defendants in error, that if the debts have no *situs* in Louisiana the present suits must prevail without regard to when they were brought); but the State court, *in these very cases*, decreed the cancellation of assessment of money in bank assessed to all the foreign insurance companies (with one exception). If there had been any statutory period of limitation applying, this relief could not and would not have been granted by the State court

for the assessments of 1906 and 1907. But it was granted.

See, moreover, *Howcott vs. Smart*, 54 South. Rep., 586 (Louisiana Supreme Court, February 27, 1911), at page 589:

“The next defense is that the Revenue Act provides a time within which to assert errors. * * * The questions we have decided in this decision are not barred by the statute because they are nullities *which go to the origin of the right claimed by the State.*” (Italics ours.)

In other words, the period of limitation established by the act goes only to matters of *description* and to matters of *valuation*, and has no application to defects so serious in their character as to violate the Constitution of the United States and to constitute the taking of property without due process of law.

The act has, accordingly, no application to these cases, which proceed upon the theory that the assessments are null *in toto* under the Constitution of the United States, first, because the property assessed is not within the State, and, second, because even if the property were within the State the assessments are such only in name, constituting in fact an arbitrary taking within the rule established by *Raymond vs. Chicago Union Traction Co.*, 207 U. S., 220.

X.

A final point remains. Even if the assessments were not null *in toto*, as we maintain that they were, they were and are null clearly to the extent to which they include accounts never in existence or long since collected and transmitted, hence not within the State. Thus the assessment to the Liverpool and London and Globe Insurance Company was \$112,000, while the entire amount of premiums collected by it during the entire year was only about \$15,000 (Transcript, p. 13), and the average amount outstanding uncollected as debts at any one time was from one-sixth to one-twelfth thereof. At one-twelfth, the total amount of debts due the company at any one time by policy-holders resident in Louisiana was about \$1,250. The assessment was \$112,000. The difference between \$112,000 and \$1,250 was never in existence as a debt at any time in the State of Louisiana or anywhere else. The assessment of this difference—\$110,750—is an assessment of property that never existed anywhere, and certainly never existed in the State of Louisiana. *Delaware, etc., R. R. vs. Pennsylvania*, 198 U. S., 341; *Union Transit Co. vs. Kentucky*, 199 U. S., 194. As to this amount of \$110,750, the assessment should be cancelled. And there should be a similar cancellation in the *Orient case*, and in every one of the cases represented by it, to the extent to which the assessment includes property admittedly not in existence—accounts admittedly not outstanding, in fact.

Even then the assessments would include unearned premiums, since at the end of thirty or sixty days only a small proportion of the total premium of the year is earned.

Defendants in error attempt to meet this by contending that this is in effect seeking a reduction which is within the statutory period of limitations established by Section 26 of Act 170 of 1898.

But there can be no question of seeking a reduction unless there is a question of valuation. And there is no question of valuation, for a dollar is worth a dollar, and no more. If we admitted that we had \$112,000 of accounts outstanding, and contended that because of the insolvency or financial irresponsibility of our debtors, that \$112,000 was worth only fifty cents on the dollar, a question of valuation might be presented. No such element, however, enters into the case. No point is made as to the full value of each dollar due; but there are only 1,250 dollars due. The surplus never existed.

To illustrate concretely: If an assessment were made of 500 mules at \$200 each, or \$100,000 in all, a suit to be relieved of the payment of taxes on any assessment beyond \$50,000 on the ground that each mule was worth only \$100, would be a suit to reduce the valuation. Such a suit would involve no Federal right or question, and such a suit would accordingly be within the period of limitation established by section 26 of Act 170 of 1898.

But a suit to be relieved of the payment of taxes

on any assessment beyond \$50,000 on the ground that although each mule was admitted to be worth \$200, there were only 250 mules within the State, would present a clear Federal question on the issue as to whether the remaining 250 mules were in fact within or without the State's taxing jurisdiction. See *Delaware, etc., Co. vs. Pennsylvania*, 198 U. S., 341. The assessors had no more right here in fixing the assessment to take into consideration accounts that had long since been reduced to possession and passed out of the State than in the case cited had they the right to take into account coal permanently outside the State. And it follows from the preceding discussion that no suit presenting such a question will be within the statutory limitation bar.

Such a suit presents no issue of *valuation* of property. The issue is as to *existence* of property.

So with the *Liverpool suit* here and the suits consolidated in the *Orient case*. Properly analyzed, these are suits to cancel—primarily to cancel *in toto*. But if cancellation *in toto* for any reason cannot be decreed, no reason can be suggested why cancellation in part should not be.

The suggestion of the Louisiana Supreme Court in the *Liverpool case* that such relief could not be granted because not prayed for (apart from the novelty of the doctrine in Louisiana pleading in the face of the prayer for general relief) proceeded upon a misconception of the character of the

relief sought—upon the theory that it was a reduction when in fact it was a cancellation.

See *U. S. vs. Tenn. & Coosa Rd.*, 176 U. S., 242, at 256:

“It is urged, however, by appellees that the decree should not be reversed because the bill was framed to produce a forfeiture of the grant, not to adjust its limits, and because the question was not raised by the assignments of errors on the appeal to the Circuit Court, nor on this appeal. Neither reason is sufficient. We may notice a plain error though not assigned, and the prayer in the bill for a forfeiture of the entire grant did not preclude a forfeiture of a part of it.”

Conclusion.

The taxes sought to be levied in these cases present extreme instances of the taking of property without due process:

First. Because the debts due to the foreign insurance companies by their agents resident in Louisiana, payable outside the State, unevicenced by concrete form and representing no capital invested in business, are not property in Louisiana, have no *situs* in Louisiana and are not taxable there.

Second. Because if it could be granted that the debts were property and taxable in Louisiana, the so-called assessments in these cases were made so arbitrarily and so consciously unfairly as to afford no basis for taxation and to constitute a taking of property without due process.

The plaintiffs in error already pay to the State of Louisiana license taxes for the privilege of doing business within her borders. They have brought no capital or property into the State.

We respectfully submit that to maintain the taxes sought to be exacted in these cases will require this court to reverse the unbroken line of authorities dating back to the *Foreign-Held Bonds case*; will directly result in the double taxation of the same property by different jurisdictions; and, because of the arbitrary and discriminating character of the so-called assessments, will permit confiscation under the guise of taxation.

We pray for relief accordingly.

Respectfully submitted,

J. BLANC MONROE,
MONTE M. LEMANN,

Attorneys for Plaintiff in Error

ALEX. C. KING,
HALL, MONROE & LEMANN,

Of Counsel.



ADDENDUM.

Additional Authorities to the Effect that a Debt is not Property and Cannot be Taxed where the Debtor Resides.

Murray vs. Charleston, 96 U. S., 432-440:

“Debts are not property. A non-resident creditor cannot be said to be, in virtue of a debt due to him, a holder of property within the city; and the city council was authorized to make assessments only upon the inhabitants of Charleston or those holding taxable property within same.”

Pyle vs. Brennerman, 122 Fed., 787 (C. C. of App., 1903):

“A deposit in a bank to the credit of the depositor and subject to his check is a debt, and not property, and its situs for the purpose of taxation is in the State of the depositor’s domicile.”

Citing 15 Wall., 300; 100 U. S., 491;
96 U. S., 432.

Railroad Company vs. Morrow, 87 Tenn., 406 (2 L. R. A., 853):

“Non-resident bondholders are not taxable in this State upon bonds of our domestic corporations held and owned by them. Neither the bondholders nor this property is within the jurisdiction of the State. The Act of 1887, chapter 2, section 8, so far as

it undertakes to impose such tax upon previously issued bonds, is invalid.

“The court said at page 437 (through Mr. Justice Lurton):

“ ‘The fiction that debts have no situs but that of the creditor is founded upon a consideration of the nature of such property. It is not property save in the hands of the creditor. * * *

“ ‘To sustain the jurisdiction of the State over these bonds for purposes of taxation we must ignore or contradict the legal fiction which ascribes to such property the situs of the owner. If the actual situs upon examination should prove to be here, then the legal fiction must yield. But the actual situs is not here, and to sustain the jurisdiction we must create a fiction or constructive *situs* based upon the notion that debts are in some way property in the hands of the debtor, or that the security for the debt being here, that, therefore, the debt is here. By no sort of fiction can the jurisdiction of the State be held to extend to the property which a non-resident has in a debt which he holds against a resident. The creditor cannot be taxed because he is not within the jurisdiction, and his property cannot be taxed because it is not within the jurisdiction. (Citing 15 Wall., 300; 11 Wall., 430; 106 N. Y., 25; 27 Gratt., 344)”

State vs. Earl, 1 Nev., 394:

“A tax on money at interest, secured by mortgage on land, is neither a tax on the pieces of money loaned, the land on which the mortgage security is taken, nor upon the paper on which the promise to pay is

written. But it is a tax on the chose in action or right to collect the debt.

“Choses in action follow the person of those having the right. Where the holder of such right resides out of the State of Nevada, this State has no jurisdiction over the person nor over the thing proposed to be taxed, and cannot tax either.”

Commissioners vs. Cutter, 3 Colo., 349:

“Personal property which has a locus here is without doubt subject to taxation under our revenue laws, which, while they, in general, can have no extra-territorial force, may reach all property within the State without reference to the residence of the owner. A herd of cattle, a flock of sheep, a stock of merchandise, owned by a non-resident, but kept within the State, are proper subjects of taxation. But debts due from a resident of Colorado to a resident of California are in no legitimate sense the property of the debtor. They belong to the creditor. They have no situs apart from the residence of their owner. * * * A debt is invisible and intangible, following the creditor's domicile, and wherever that may be, is out of reach of the taxing power. But, as the domicile of the owner and the choses in action upon which taxes were paid was in California, it cannot be said that they constituted property within the late territory of Colorado, and were, therefore, the subject of taxation here. (Citing 15 Wall., 300; 12 Ia., 539; 50 Ga., 393; 25 Cal., 601; 3 McCord, 373; 14 B. Monroe, 521.)”

Myers vs. Seabarger, 45 O. St., 222:

“A loan of money secured by mortgage on real estate is a credit within the meaning of the statutes of this State providing for the taxation of property; and, where the creditor resides in another State, is not subject to taxation in this, although the securities are in the hands of an agent residing here, and entrusted by the terms of his agency with the collection of the interest and principal when due, and its transmission to the creditor when collected.”

The court said at page 235:

“So that it seems clear that the credits of persons not residing in this State are not the subjects of taxation by its authorities, though the debtor may reside here. Such has been the uniform policy of this State. To use the language of Welch, J., in the case above cited (*Worthington vs. Sebastian*, 25 O. St., 8) : ‘Intangible property has no actual situs. If, for purposes of taxation, we assign it a legal situs, surely that situs should be the place where it is owned, and not the place where it is owed. It is incapable of a separate situs, and must follow the situs either of the creditor or of the debtor. To make it follow the residence of the latter is to tax the debtor, and not the creditor.’ * * *

“In *Railroad Company vs. Pennsylvania*, 15 Wall. 300, it was held by the Supreme Court of the United States that a State cannot tax the credits of non-residents, though secured by mortgage on property in it, on the ground that the situs of a credit being

that of the creditor, is not within the jurisdiction of the State, and, therefore, not subject to taxation by it. * * * To loan or invest money is one thing; to collect and transmit to the owner when collected is another and different thing."

Davenport vs. Railroad, 12 Ia., 539:

The question arose before the Supreme Court of Iowa whether mortgages on property in that State held by non-residents should pay taxes under a law which provided that all property, real and personal, within the State, should be subjected to taxation, and the court said:

"Both in law and equity the mortgage has only a chattel interest. It is true that the situs of the property mortgaged is within the jurisdiction of the State; but the mortgage itself being personal property, a chose in action attaches to the person of the owner. It is agreed by the parties that the owners and holders of the mortgages are non residents of the State. If so, and the property mortgaged attaches to the person of the owner, it follows that these mortgages are not property within the State, and, if not, they are not subject to taxation.' "

In re Appeal of Union Tank Line Company, 204 Ill., 347 (98 Am. St. Rep., 221); 68 N. E., 504:

"Credits of a foreign corporation, payable at its home office, where they are subject to taxation, cannot be taxed in another State."

Mayor of Baltimore vs. Hussey, 67 Md., 112 (8 Atl., 19):

“The certificates of stock are mere promises to pay the owner a certain sum of money and interest thereon. As such they are unquestionably personal property in the hands of the creditor, and have their taxable situs at the domicile of the owner. The mere right to receive of the city the principal or interest within the State is a right personal to the creditor as owner of the debt and is not, therefore, subject to taxation in this State. But this can no longer be considered an open question, because it was fully considered and decided by the Supreme Court in the cases of *Foreign-Held Bonds*, 15 Wall., 317, and *Murray vs. Charleston*, 96 U. S., 432.)”

Territory vs. Delinquent Tax List, 24 Pac., 182 (Ariz.):

“In this instance the thing sought to be taxed was a debt due from a resident of Oklahoma to a resident of California, and was evidenced by a promissory note. The note being of that species of property which pertains to and follows the person of the holder, its *situs* for the purpose of taxation could only be at the place of residence of the owner. This is so well settled that we need only to cite the following cases: *Conners vs. Cutler*, 3 Colo., 350; *People vs. Eastman*, 25 Cal., 602; *R. R. Co. vs. Pennsylvania*, 15 Wall., 300.”

Words and Phrases, verbo "Property" (Volume 6, p. 5705):

"The term '*property*' does not include debts, and, therefore, it may be doubted whether a power given to a municipal corporation to tax property authorizes it to tax debts. (*Murray vs. Charleston*, 96 U. S., 432-440.)

Senour, Treasurer, vs. Ruth, 39 N. E., 946 (Ind., 1895):

"Non-resident holders of notes of residents of Indiana secured by mortgage on land in such State, and such notes are not within the jurisdiction of Indiana within the meaning of acts of 1891, page 199. Sections 3, 4 and 11, which provide that all property within the jurisdiction of the State not expressly exempted, is subject to taxation. * * * The principle upon which these cases have been decided is that such property is intangible, and that its situs is at the place of residence of the owner."

Ruckgaber vs. Moore, 104 Fed 947, at page 949:

"An account owing by a resident of the United States to a resident citizen of France does not and cannot have a situs in the State of New York, but its situs is that of its owner. There is no property here. What there is of property is abroad."

Scripps vs. Board of Review, 183 Ill., 278:

"In the absence of a statute to the contrary, a debt for money loaned by a citizen

of one State to a citizen of another State is taxable in the State, and county where the creditor resides, although the debt is payable at the debtor's residence to the creditor's agent.

"The Court said at page 282:

" 'A debt has no situs other than the domicile of the owner. It cannot be taxed to the debtor, for in such case it would not be a tax on property or wealth, but would be a tax on the converse and a tax on poverty. The debtor may be in one State and the creditor and security for the debt in another.' "

The Court then quoted *Railroad Co. vs. Pennsylvania*, 15 Wall., 300."

Gray on Limitations of Taxing Power, page 75, Section 896:

"Credits which have not been reduced to any concrete form, according to the weight of direct opinion up to the present time, may only be taxed at the domicile of the creditor. (Citing authorities.)

"Thus, it is held that uncollected premiums due to a foreign insurance company from residents of the taxing State cannot be taxed as 'credits' against the insurance company, as such credits are only taxable at the domicile of the company."

Supreme Court of the United States

October Term 1909.

No. 793. (No. 92.)

ORIENT INSURANCE COMPANY ET AL.,
Plaintiffs in Error,

VERSUS

THE BOARD OF ASSESSORS FOR THE PARISH OF
ORLEANS, THE CITY OF NEW ORLEANS AND
JOHN FITZPATRICK, STATE TAX COL-
LECTOR.

In Error to the Supreme Court of Louisiana.

Brief for Defendants in Error.

SYLLABUS.

The imposition by the Legislature of the State of Louisiana of a tax upon the capital employed by foreign insurance companies in the conduct of their business in that State, in the same manner and to the same extent as domestic insurance companies are taxed,

is not violative of the Constitution of the United States, but is a legitimate exercise of legislative power and discretion.

“Statutes of limitations are in their nature arbitrary and rest upon no other foundation than the judgment of the State as to what will promote the interests of its citizens. Each State determines such limitations and imposes such restraints as it thinks proper.”

20 Wall. 137 (22 Law Ed. 337).

May It Please the Court:

The Orient Insurance Company, a corporation organized under the laws of the State of Connecticut, engaged in writing contracts of fire insurance, and having a legal domicile and doing business in the City of New Orleans, State of Louisiana, together with twenty-three other insurance companies, doing business under exactly the same conditions, brought suit, in the month of August, 1908, to cancel, or, in the alternative, to reduce certain assessments levied against them in the years 1906, 1907 and 1908 on

“Money loaned on interest, all credits and bills receivable for money loaned on interest or advanced or for goods sold.

“Cash or money in possession.”

The petitions of the various plaintiffs alleged that the assessments were illegal, null and unconstitutional, for the following, among other, reasons:

1. The Legislature has not the power to localize an abstract credit away from the domicile of the creditor, the State power of taxation being limited to persons, property or business within its jurisdiction.

2. The levying of a tax upon incorporeal things, such as abstract credits, not in so-called concrete form, and without tangible shape, violates the Fourteenth Amendment of the United States Constitution.

3. The Revenue Acts of the State of Louisiana do not purport or pretend to authorize the assessment or the levy of a tax upon premiums due to foreign insurance companies under open, unliquidated accounts.

4. The Constitution of the State of Louisiana prohibits the collection of taxes by suit, and, in as much as such open accounts can not be seized for taxes, and could would violate Article 232 of said Constitution.

5. The Legislature, by Act 170 of 1906, has affirmed the interpretation by the Supreme Court of Louisiana of its Revenue Acts by declaring that all evidence of indebtedness shall be taxable only at the **situs** or domicile of the owner thereof.

6. The illegal assessment on which the tax claimed is based is absolutely void because it is so grossly excessive as to be inconsistent with an honest judgment, and is so unequal and discriminating as to violate the fundamental law."

And in the event the demand for cancellation was denied, reduction of the assessments to the amounts therein set out was prayed.

To this petition defendants first urged an exception of no cause of action in so far as reductions for the years 1906 and 1907 were asked, because judicial demand was not made for same within the time prescribed by law.

They then urged that plaintiff was estopped to contest the correctness of the assessments by reason of its failure to make return of its property as required by law; also by its failure to apply for a reduction to the Board of Assessors and to the Board of Review.

Reserving the benefit of the foregoing, defendants answered specially denying the allegations in the petition and setting up the legality of the assessments.

Defendants also filed a plea of prescription as to the demand for the reduction of the assessments for the years 1906 and 1907.

The Supreme Court of Louisiana rendered judgment cancelling the assessments for cash on hand except in one instance, reducing the assessments on "credits" for the year 1908, to the amounts prayed for and sustaining the assessments on "credits" for the years 1906 and 1907, on the ground that the action to reduce the same was prescribed under Section 26 of Act 170 of the General Assembly of Louisiana of 1898, which may be found in part second of this brief. From which judgment plaintiffs sued out a writ of error to the Supreme Court of Louisiana.

The Assignments of Error made by plaintiff herein resolve themselves into two questions:

First: Is the taxation by the State of Louisiana, of property in the form of credits and bills receivable growing out of business done in that State by foreign insurance companies who have a business domicile therein, violative of the Federal Constitution and especially the Fourteenth Amendment thereto?

Second: Has the Legislature of Louisiana the right to prescribe the time in which actions for the reduction of assessments may be brought?

We will discuss these propositions in the order given.

FIRST.

It must be understood at the outset that plaintiff is a foreign insurance corporation which has come into the State of Louisiana and has established a legal and business domicile there. It makes contracts in Louisiana which contracts are interpreted and governed by Louisiana law. It can be sued in Louisiana and served with effective citation and the credits herein taxed may be seized under execution by the Civil Sheriff of the Parish of Orleans. Indeed, in so far as its Louisiana business is concerned, it is as absolutely bound by the laws of that State as if it had no other domicile. To say that such control stops short of the power of taxation, we submit is absurd.

The Revised Civil Code of Louisiana, Article 9, says:

“The law is obligatory upon all the inhabitants of the State indiscriminately. The foreigner whilst

residing in the State and his property within its limits are subject to the laws of the State."

The assessments herein complained of were made under Section 7 of Act 170 of 1898, which provides:

"It is made the duty of the tax assessors throughout the State to place upon the assessment list all property subject to taxation; * * * that, in assessing mercantile firms the true intent and purpose of this act shall be held to mean the placing of such value upon the stock in trade, all cash, whether borrowed or not, money at interest, open accounts, credits, etc., as will represent in their aggregate a fair average on the capital, both cash and credit, employed. **And this shall apply to any person or persons representing in this State business interests that may claim a domicile elsewhere, the intent and purpose being that no non-resident, either by himself or through any agent, shall transact any business here without paying to the State a corresponding tax with that exacted of its own citizens; and all bills receivable, obligations or credits arising from the business done in this State are hereby declared assessable within this State, and at the business domicile of said non-resident, his agent or representative.**"

The highest court in Louisiana has decided that the assessments were properly made under that Section of the Statute, which brings the first proposition squarely before your Honors.

It is contended by the Plaintiff in Error, that the clause quoted as applied by the Supreme Court of Louisiana in this case is unconstitutional as being in contraven-

tion of the Fourteenth Amendment to the Constitution of the United States. The contrary has long been maintained by the majority of the Courts and the ablest text writers and we submit the following on this point:

“There is nothing in the Federal Constitution that prevents a State from prescribing the terms on which foreign corporations shall come within its borders and carry on business with its citizens. The whole matter of admitting foreign corporations to do business in a State rests absolutely on the discretion of the Legislature of the State.”

13 E. & A. Enc. of Law (2d Ed.), p. 860, and authorities cited in Note 1, p. 861.

“And as no State is under obligation to permit a foreign corporation to carry on business or exercise franchises within its territory, the permission to do so may be granted under such restrictions, or permitted on such conditions regarding taxation, as the State may think proper or prudent to impose; provided, that such conditions are not repugnant to the Constitution of the State or to the Constitution and laws of the United States.” (Black-letters are our own.)

Cooley on Taxation, 3d (new) Ed., Vol. 1, pp. 94 and 95, and authorities supporting the text in Notes 1, 2, 3.

One of the latest and most thorough treatises on the law of corporations lays down the doctrine as follows:

“With exceptions hereafter indicated, relating to cases where foreign corporations are engaged in interstate commerce, or to cases where they are agencies of the United States, and to other special cases elsewhere considered, the Federal Constitution im-

poses no restraint upon the States in regard to taxation of foreign corporations, but the rule is that the States have the right to exclude them entirely; they have the power to impose upon them such burdens as the conditions of their entering as they may see fit; and these burdens or impositions may as well take the form of a taxation at a greater rate or upon a different principle from that applicable to domestic corporations as any other. When, therefore, the foreign corporation is of such a character—as, for instance, it is an insurance company, and, consequently, not engaged in interstate commerce—that the State has the power to exclude it altogether, it is under no Federal restraint in respect of this power of taxation over it. As a foreign corporation is not, within the domestic State, entitled to the **privileges and immunities of citizens of other States**, within the meaning of the Federal Constitution, it cannot demand, under that Constitution, that it shall be taxed at the same rate and on the same principles as corporations of the domestic State.”

Thompson's Commentaries on Corporations, Vol. 6, Sec. 8087, and prior sections, and authorities there referred to. (The Black-letters are the author's.)

“Foreign corporations when deemed persons.
* * * They are also deemed persons within the meaning of a statute relating to **taxation**, unless a different intent is indicated in the statute.”

Thompson's Commentaries on Corps., Vol. 6, Sec. 7900; authorities in note, 31 N. Y. 32; 18 Abb. Pr. (N. Y.) 118; 28 How. Pr. (N. Y.) 41. (The Black-letters are the author's.)

In support of this principle, **Cook on Corporations (4th Ed.), Vol. 12, p. 1080**, among other authorities, which we

will discuss later on in this brief, has the following in Note 4:

“A tax on manufacturing corporations to the extent of the business which they do in the State is constitutional and enforceable. (131 N. Y. 64; also, 10 Wall. 66; 133 N. Y. 323; 143 U. S. 305; 134 U. S. 594; 52 N. J. L. 308; 44 Fed. Rep. 24; 141 N. Y. 118; and a multitude of other authorities.)”

“Foreign insurance companies may be required to pay a tax as a condition of doing business in the State, even if home companies are not taxed, or are taxed by a different standard. The tax is not a regulation of commerce. Notwithstanding the insurance company is taxed, its agents may also be required to pay a license fee as such.”

Cooley on Taxation, p. 387, and authorities in notes 1 and 3; 48 Ill. 172; 32 Nev. 424; 10 Wall. 410; 34 N. J. 479; 35 N. J. 574; 85 Penn. St., 513; 94 Ill. 364; 104 Ill. 653; 8 Wall. 168; see, also, **Desty on Taxation**, Vol. 1, p. 372; *Ibid.*, p. 229.

Burroughs on Taxation, p. 151, in treating of taxation of foreign corporations, says:

“While it may be true, as a matter of principle, that taxation should be laid for the purpose of revenue by an equal and uniform mode, yet what shall be the subject of taxation, the mode and the rate are in the discretion of the Legislature, in the absence of express constitutional limitation on the subject of taxation, a discretion which has no limitation except that its exercise shall not abridge any of the private rights of person or property secured by the Constitution.”

This doctrine was maintained in **Paul vs. Virginia, 8 Wallace, 168**, in which case the State of Virginia had laid a discriminating tax on foreign insurance companies doing business in that State at a greater rate than on her own domestic insurance companies.

The Court sustained the State law, and decided that the business of insurance was not commerce or interstate commerce, and that a State had the right to impose any tax upon a foreign insurance company doing business in its State it deemed proper.

This was in regard to a license tax. In **10 Wallace, 573**, they held, similarly, that a law of Massachusetts which imposed a tax of one per cent. on the premiums received in Massachusetts by insurance companies incorporated under the laws of Massachusetts; two per cent. on all premiums received by the companies incorporated under the laws of the other States in the Union, and four per cent. on all premiums received by companies doing business in the State and chartered under the laws of countries other than the United States. In that decision the Court said, referring back to the case of **Paul vs. Virginia**:

“That corporations created by a State could exercise none of the functions or privileges conferred by its charter in other States of the Union, except by the comity and consent of the latter.

“This proposition disposes of the case before us, if plaintiff is a foreign corporation, and was, as such, conducting business in the State of Massachusetts.”

The case is more fully reported in **100 Mass. 531**, and see, also, **99 Mass. 148**.

The doctrine was held in **10 Wallace, 415**, in a license case similar to **Paul vs. Virginia**. In **94 U. S. 535**, the same doctrine was announced in a license case. In **96 U. S. 12**, it was held that the right of the State to tax corporations in this manner, when engaged in interstate commerce, did not exist.

So, in **113 U. S. 739**, the Court said:

"The right of the people of a State to prescribe generally, by its constitution and laws, the terms upon which a foreign corporation shall be allowed to carry on its business in the State has been settled by this Court. (**Bank of Augusta vs. Earle, 13 Pet. 519; Paul vs. Virginia, 8 Wall. 168; Ducat vs. Chicago, 10 Wall. 410.**)"

In **143 U. S. 314**, the Court said:

"Nor can there be any greater objection to a similar tax upon a foreign corporation doing business by its permission within the State. As to a foreign corporation—and all corporations in States other than the State of its creation are deemed to be foreign corporations—it can claim a right to do business in another State, to any extent, only subject to the conditions imposed by its laws."

In **165 U. S.**, the Supreme Court sustained a State tax on the proportion of capital of a non-resident express company which its property in Ohio represented, and "that the distribution among the several countries is a matter of State regulation."

In 166 U. S. 154, the Court again said:

“The tax in controversy was nothing more than a tax on the intangible property of the company in Kentucky, and was sustained as such, by the Court of Appeals, as consistent with the provisions of the Constitution of Kentucky in reference to taxation. And, for the reasons given, and on the authorities cited in **Adams Express Co. vs. Ohio State Auditor**, 165 U. S. 194, we are unable to conclude that the method of taxation prescribed by the State of Kentucky, and followed in making this assessment, is in violation of the Constitution of the United States.”

In the fuller statement of the case, page 156, by the dissenting Judges, it is said that the tax statute includes, “the intangible property of such corporations, which property—that is, the intangible property—whether situated in or out of the State, shall be considered and estimated in fixing the value of the corporate franchises.”

In **Parke, Davis & Co. vs. Comptroller of New York**, 171 U. S. 658, the Supreme Court of the United States sustained a State tax on the business and franchises of a Michigan corporation, manufacturing drugs in the City of Detroit, but doing business in the City of New York. In that case the Court said:

“It must be regarded as finally settled by frequent decisions of this Court that, subject to certain limitations as respects interests and foreign commerce, a State may impose such conditions upon permitting a foreign corporation to do business within its limits as it may judge expedient, and that it may make the

grant or privilege dependent upon the payment of a specific license tax or a sum proportioned to the amount of its capital used within the State. (*Paul vs. Virginia*, 8 Wall. 168; *Horn vs. Silver Mining Co. vs. New York*, 143 U. S. 305.)"

"The statute places foreign corporations on the same footing as domestic corporations, and subjects them to the same mode of taxation as if they were residents within the State."

Desty on Taxation, Vol. 1, p. 344; and authorities in Note 14, supporting the text.

The statute here alluded to in Desty is the same as that of Louisiana, here under discussion.

So in 115 La. 708, *Metropolitan Life Ins. Co. vs. Board of Assessors*, our own Supreme Court said:

"It is not contested that the State has the right, in consenting to allow foreign corporations to carry on business within her borders, to attach such conditions to such consent as she pleases. These foreign corporations are under no obligation to accept the terms; but, if they do accept them, and carry on business in the State, they must comply with them. They cannot avail themselves of the benefits of the consent and repudiate the obligations attached thereto. **The conditions of the consent may refer to the matter of taxation**, as well as to anything else. When foreign corporations come into the State for business purposes, **they are constructively present in the State, and voluntarily place themselves within the jurisdiction of the State, and accept and subject themselves to the laws thereof.**" (Black-letters are our own.)

And, continuing, the Court said:

“As was said in **Bluefields Banana Co. vs. Board of Assessors**, these foreign corporations do business in Louisiana, transact their business precisely as do resident businessmen and corporations. They derive all the advantages to be obtained from the State and city governments which residents receive, and we see no reason why they should not be taxed as claimed, unless there be insuperable objections in the way.” (p. 709. [Black-letters are our own.]

In **Beale on Foreign Corporations**, page 654, in the latter part of paragraph 501, the author quotes Mr. Justice Brewer in the case of **Adams Express Co. vs. Ohio State Auditor**, 166 U. S. 185, 41 Law Ed. 965, as follows:

“In conclusion, let us say that this is an eminently practical age; that Courts must recognize things as they are, and as possessing a value which is accorded to them in the markets of the world; and that no fine-spun theories about **situs** should interfere to enable these large corporations, whose business is, of necessity, carried on through many States, from bearing, in each State, such burden of taxation as a fair distribution of the actual value of their property among those States requires.”

Algeyer vs. Louisiana, 165 U. S. 583:

“There is no doubt of the power of the State to prohibit foreign insurance companies from doing business within its limits. The State can impose such conditions as it pleases upon the doing of any business by those companies within its borders, and, unless the conditions be complied with, the prohibition may be absolute. The cases upon this subject are

cited in the opinion of the Court in **Hooper vs. California**, 155 U. S. 648."

WHAT IS DOING BUSINESS IN THE STATE?

Another question is raised: Do these foreign corporations fall under the provision of the statute which says that "no non-resident, either by himself or through any agent, shall **transact any business here without paying to the State a corresponding tax with that exacted of its own citizens**"? (Black-letters are our own.) This question turns on the point as to what is the meaning of the words "transact any business," which is equivalent to "doing business in the State."

"Where an insurance company, by means of agents, writes policies and collects premiums within a State, and designates an officer upon whom papers may be served, it is doing business in the State."

Gray on Lims. of Taxing Power, Sec. 133, p. 103.

Paul vs. Virginia, 8 Wall. 185; **Am. & Eng. Enc. of Law**, Vol. 13, pp. 873, 874; 32 **Fed. Rep.** 273; 4 **Dillon** 177; 13 **Fed. Rep.** 526; 1 **McCrory**, 123; 1 **Fed. Rep.** 471; 22 **Fed. Rep.** 109; 8 Wall. 168; 117 U. S. 519.

So in **People ex rel. Badische Anilin und Soda Fabrik vs. Roberts**, 36 L. R. A. 758, the Court of Appeals of New York said:

"If the latter" (foreign corporations) "come into the State for the purpose of **doing some part of their corporate business here, they are placed under the obligation to bear some portion of the general bur-**

den of taxation. The Legislature has declared that the business done shall bear the burden of a tax to the extent that is ascertained that the capital employed here. *People (American Contracting & D. Co.) vs. Wemple*, 129 N. Y. 558; *People (Southern Cotton Oil Co.) vs. Wemple*, 131 N. Y. 64; *People (Pennsylvania R. C.) vs. Wimple*, 138 N. Y. 1, 19 L. R. A. 694; *People (Singer Mfg. Co.) vs. Wemple*, 150 N. Y. 46.)

“The intention of the Legislature is that, when foreign corporations employ their capital in carrying on a business within this State, they must pay a tax to the State in return for the privileges and benefits they enjoy. Indeed, no good reason can be urged why they should not, according to the business done, be subjected to the same burdens and obligations as are domestic corporations. The policy of the State is not to prevent the employment here of foreign capital, nor place any unreasonable restriction upon such employment. To the contrary, by a wise and enlightened policy, the greatest facilities are offered for the conduct of commercial enterprises of every nature within our borders, without any unreasonable discrimination between the resident and the foreigner.

“If it requires of the foreign corporation that is shall contribute to the revenues of the State a tax measured by the amount of capital employed in doing business here, it is but the requirement in one form of what it exacts from the home corporation in another form. It is needless to discuss the question more elaborately in view of the discussion it has received in this Court in many decisions.”

Under Section 2, third paragraph, of Act No. 105 of 1898, page 143, any foreign insurance company doing

business in the State of Louisiana is required to "appoint as its agent or agents in this State some residents thereof who are citizens of the United States." So that no foreign insurance company can do business in this State without appointing a duly-authorized agent, a resident of the State and citizen of the United States.

"A foreign corporation may establish a legal residence in the State wherein it is allowed to conduct or carry on a business. This would be, in the absence of statutory provisions directing otherwise, where the corporation, through its managing agent, executed its powers and transacted its business. * * * But the corporation or person using the same, having an agent and place of business within the State, may be made liable to taxation therefor at the place of business of the corporation or residence of the agent."

Welty on the Law of Assessments, pp. 112, 114, Sec. 49.

In Note 1, page 113, *City of Dubuque vs. Illinois Central R. Co.*, 39 Iowa, 85, 85, is cited and quoted from as sustaining the text, as follows:

"The rolling-stock of defendant is used in the same way and is governed by the same rules. The manager or agent of defendant for the State, being required to list the property, must do so as though it were his own. His place of business is Dubuque. There his property, were it used in like manner, would be taxable, and there must defendant's be listed and taxed."

So in 46 Fed. Rep. 440, in which case an Illinois company carried on its business, through agents, in Missouri,

who received applications for insurance. These applications were forwarded to Chicago, the domicile of the company, and, when approved, the policies were forwarded to Missouri to the agent, who, on receiving the premiums, delivered the policies to the assured. The Court held that the Illinois company was doing business in Missouri, and said:

“Doing business in this State brings the policy within the operation of its laws, notwithstanding the policy may be signed and the loss made payable in another State. In such cases, the company cannot, by any contrivance or device whatever, evade the effect and operations of the laws of the State where it is doing business. (**Wall vs. Society, 32 Fed. Rep. 273.**)”

“A foreign corporation can only act through an agent; and, consequently, if an ordinary agent is appointed by the company, and permanently established in the State to carry on the business of the company, the company is doing business in the State. The clearest case of this sort is the appointment of a resident manager for a branch office; but, if the corporation maintains a resident agency, even if it does not amount to a branch establishment, the corporation is doing business; as, when it appoints resident agents to solicit loans, or **insurance**, or to make sales, or purchases of raw materials.”

Beale on Foreign Corporations, p. 333, Sec. 206.

“Where, however, the foreign corporation enters upon a continuous line of business, it is doing business within the State.”

Ib. 231, Sec. 205.

“Where the agent carries on business in his own name, and on his own account, hiring his office and clerks, and paid, like a factor, by a commission, but differing from a factor in representing the corporation alone, the case is a more difficult one. It has been held in such a case that the corporation is carrying on the business through its agent.”

Ib., Sec. 206, p. 334, and authorities cited in notes sustaining its text.

TAXATION OF CREDITS, ETC., OF FOREIGN CORPORATIONS.

In 100 Mass. 531, **Oliver vs. Liverpool & London Life & Fire Ins. Co.**, a Massachusetts statute provided that:

“each fire and life and fire and marine insurance company incorporated or associated under the laws of any Government or State other than one of the United States shall annually pay to the Treasurer of the Commonwealth a tax of four per cent. upon all premiums charged or received on contracts made in this Commonwealth for the insurance of property, or received or collected by agents in this Commonwealth.”

The constitutionality of this act was assailed, but the tax was sustained. The case went up, by writ of error, to the Supreme Court of the United States, and that august tribunal disposed of it, in 10 Wall. 573, in a very short opinion, in which it said that “corporations created by a State could exercise none of the functions or privileges conferred by its charter in other States of the Union, except by the comity and consent of the latter. This proposi-

tion disposes of the case before us if plaintiff is a foreign corporation and was, as such, conducting business in the State of Massachusetts," and affirmed the decision of the Supreme Court of Massachusetts.

"In other recent cases it has been held that credits, in the form of notes, choses in action and bank accounts, belonging to a foreign corporation doing business in the taxing State, which credits resulted from its business operations in the State, are taxable."

Gray on Limitations of Taxation, p. 70, Sec. 89.

Among the cases cited in the note in support of the text are the two Georgia cases, **Armour Packing Co. vs. Mayor, Etc., of City of Savannah, 41 S. E. Rep. 237**, and **Armour Packing Co. vs. City of Augusta, 45 S. E. 424**. In both of these cases, in able opinions, the Supreme Court of Georgia discusses the question of taxation of credits, notes, etc., of foreign corporations doing business in that State under the Georgia laws, and decides that the credits are taxable in Georgia.

"A foreign corporation, which is liable for personal taxation for sums invested in business in this State, is taxable upon credits and bills receivable which are in this State and are due the corporation for merchandise sold by it in the transaction of business in this State. **People ex rel. Yellow Pine Co. vs. Barker, 23 App. Div. 524; affirmed, 155 N. Y. 665.**")"

Hammond on Taxation of Business Corporations, Par. 29, p. 22.

"And it is well settled that choses in action, whether book accounts, promissory notes or other

credits due in the regular course of business carried on by foreign corporation within a State, are taxable."

Beale on Foreign Corporations, p. 647, Sec. 488.

"It has been held that a deposit of money in a bank, although technically a credit, is still money for all practicable purposes, and taxable, although belonging to a non-resident."

Cooley on Taxation, 3d. (new) Ed., Vol. 1, p. 92;
and in the note the following authorities are cited to sustain the text: **In re Romain, 127 N. Y. 80; In re Houdayer's Estate, 150 N. Y. 37; Schmidt vs. Bailey, 248 Ind. 159, 47 N. E. 326.**

And on page 658 of the same volume:

"Sometimes, also, intangible personal property is by statute made taxable where it may be regarded as actually located, rather than at the place of the owner's domicile,"

and in Note 2 to the text it is said:

"The Legislature may fix the place where personal property, including moneys, credits and investments, subject to taxation in the State, may be listed. (**Brown vs. Noble, 42 Ohio St. 405; Sommers vs. Boyd, 48 Ohio St. 648.**)"

The ancient fiction

MOBILIA SEQUUNTUR PERSONAM.

will possibly be urged by our opponents in opposition to these authorities. Indeed, some decisions of the Supreme Court of Louisiana up-holding this fiction may be cited, but these can be disposed of with few words.

All of the cases prior to that of **Liverpool, etc., Ins. Co., 51 La. An. 1028**, which uphold the doctrine of **mobilia sequuntur personam** as regards taxation were rendered before the year 1890, when the revenue law abolishing the fiction was passed. In the **51 An. case** the Court must have overlooked this amendment for they say (p. 1034:)

“The revenue law enacted in 1888, is substantially the same, and was not less broad in its scope than the Act of 1890.”

Be that as it may, however, the present jurisprudence of Louisiana is what the Supreme Court of Louisiana has decided in the case at bar.

This doctrine, **mobilia sequuntur personam**, in general terms, embraces the principle that the domicile of movable or personal property follows that of the owner, and the laws in force at the domicile of the owner govern the disposition, control and relations of the movable property. The origin of the doctrine has been traced to the civil law, and its application made according to that law. Judge Story, in his *Conflict of Laws*, 8th Ed. Chap. IX., and Wharton, in his *Conflict of Laws*, 2d Ed., p. 414, Sec. 334, learnedly discuss its origin and its proper application. Wharton says in Section 343:

“If we view that law as now applied, we must admit that the tendency of present authority, as has already been shown, is to deny the proposition in **toto**, and to hold, on the contrary, that all property,

movable and immovable, is to be judged of, and determined by the *lex rei sitae*."

Story does not go as far as Wharton, but says (Note a, p. 543):

"**Mobilia Sequuntur Personam**. The exceptions to the maxim, '**Mobilia sequuntur personam**,' have become so numerous that it can not be safely invoked for the decision of any but the simplest cases at the present day, if ever, indeed, a case can ever be safely decided upon a maxim."

Both these authors agree that the principle will only govern when its invocation does not conflict with the positive law of the State where the movables are actually situated. In other words, that it is a fiction of law, which prevails by comity, and it must yield to positive law. It is a singular coincidence that the principle laid down by these authors, and now generally accepted, was first in America applied by the Supreme Court of Louisiana, and was then followed by Courts of the other States and by the Federal Courts. Both Story and Wharton discuss and approve the Louisiana case as the leading case. In **4 Martin 20**, a sale made, at the domicile of the owner in New York, of movables situated in Louisiana, but without delivery, was held not to protect the property from seizure in Louisiana, although, under the law of New York, the sale was complete without delivery. The decision is short and does not include any general reasoning. The doctrine, however, was reaffirmed in **5 Martin**

23, and 7 **Martin** 24. In these cases the opinions are brief also, and it is only in 2 **Martin N. S.**, which reaffirms the prior decisions, that the Court enters more fully into the question, and declares (p. 79):

“Nor can the foreigner or stranger complain of this. If he sends his property within a jurisdiction different from that where he resides, he impliedly submits it to the rules and regulations in force in the country where he places it. **What the law protects it has a right to regulate.**” [The black-letters are the Court’s.)

The doctrine is repeated in 17 **La.** 590. In 8 **Rob.** 414, the Court said:

“We consider the doctrine as well settled now that personal property has no locality, and that the laws of the owner’s domicile should, in all cases, determine the validity of the transfer or alienation, **unless there is some positive or customary laws of this country to the contrary.** [Black-letters ours.] (**Story’s Conflict of Laws, Sec. 383 et seq.**)”

See, also, 42 **An.** 93, 579; 31 **An.** 509.

The Louisiana cases cited by us refer to the abolition of the maxim by positive law in cases strictly between citizens of our own and other States.

We have, therefore, examined and discussed the question as to how far the general principle of “**Mobilia sequuntur personam**” is abolished and done away with in cases where the private rights are affected as between citizens of one State and those of another. We think that we have shown conclusively that, in this branch

of private international law, the comity by which the fiction is respected will not be allowed to prevail where there is positive law conflicting with the laws of the domicile, and the fiction would injure or act detrimentally to the interests of the citizens of the State wherein the doctrine was invoked. We now pass on to the larger question under public international law, where the principle would affect the rights and privileges of the State itself, as in cases of

POSITIVE LAWS OF TAXATION,

doing away with the comity on the question.

The jurisprudence of Louisiana will show that the same principle prevails in the public law as in private law. The legacy tax against foreign heirs and legatees, levied by an old law of the State, irrespective of the fact whether the deceased was domiciled in the State or not, has been uniformly sustained by our Courts, notwithstanding the fact that the legacy consisted of movables, and that, immediately on the death of the deceased, the ownership vested in the heir, upon the principle of *le mort saisit le vif*.

2 An. 667; 9 An. 166; 10 An. 391; 12 An. 577; 13 An. 113.

We have shown that this honorable Court now supports the doctrine that, even as to individual non-residents, the doctrine of *mobilia sequuntur personam* yields to positive Federal and State legislation in ques-

tions of taxation. The principle becomes much stronger when applied to foreign corporations, **The maxim is not applicable to the foreign corporations, especially not to foreign insurance companies**, even if it were granted that our contention hitherto made could not be sustained, and that the doctrine of **modilia sequuntur personam** could not be abolished by positive statute, in so far as non-resident persons or individuals are concerned; then there is another principle which entirely differentiates the case of foreign insurance companies doing business in the State.

It has been uniformly decided that a State has a right to entirely exclude a foreign insurance company from doing business within its borders, or that it can impose such taxation as it sees fit.

In **165 U. S.**, the Supreme Court sustained a State tax on the proportion of capital of a non-resident express company, which its property in Ohio represented, and "that the distribution among the several countries is a matter of State regulation."

In **166 U. S. 154**, the Court again said:

"The tax in controversy was nothing more than a tax on the intangible property of the company in Kentucky, and was sustained as such by the Court of Appeals, as consistent with the provisions of the Constitution of Kentucky in reference to taxation. And for the reasons given, and on the authorities cited in **Adams Express Co. vs. Ohio State Auditor**, **165 U. S. 194**, we are unable to conclude that the method of taxation prescribed by the State of

Kentucky and followed in making this assessment is in violation of the Constitution of the United States."

In the fuller statement of the case, page 156, by the dissenting Judges, it is said that the tax statute includes "the intangible property of such corporations, which property—that is, the intangible property, whether situated in or out of the State—shall be considered and estimated in fixing the value of the corporate franchises."

In **Parke, Davis & Co. vs. Comptroller of New York**, hereinbefore referred to, the Supreme Court of the United States sustained a State tax on the business and franchise of a Michigan corporation manufacturing drugs in the City of Detroit, but doing business in the City of New York.

No civilized nation to-day allows foreigners or foreign corporations to come into its country and do business and drain the money out of its own state without paying the same taxes as its own citizens. No rule of comity is allowed to prevail, whereby the foreigner can have the protection of a country, its laws, its courts, its police, its fire department, etc., and be relieved from paying the taxes for the protection afforded the same as a citizen and a resident. To do so, would be to discriminate against its own citizens, and to throw nearly all the business into the hands of foreigners, who could thus carry on business on better terms than the residents of the State. To do this would be a political-economic suicide.

That "constitutional requirements themselves do not stand in the way" in the modifying or destroying of the doctrine of "**mobilia sequuntur personam**" by a positive State statute is plain. On the contrary, there is an especial provision in the Louisiana Constitution of 1898, in Article 242, which provides that:

"Corporations, companies or associations organized or domiciled out of the State, **but doing business therein**, may be licensed and taxed by a mode different from that provided for home corporations or companies," etc.

Now, here is a distinct and especial authorization to tax foreign corporations doing business in the State, and heretofore we have shown what is to be deemed "doing business" in the State, and the method of taxation thereon, including credits, etc. That there is no conflict with any provision of the United States Constitution and its amendments, we have already shown, and it is, therefore, not necessary to repeat here the authorities cited thereon.

In the case of **Bluefields Banana Co. vs. Board of Assessors**, 49 An. 48, the Court said:

"The company transacted business in New Orleans precisely as did resident business men and firms. It received all the advantages to be derived from the State and city governments which residents received, and we see no reason why it should not be taxed, as claimed in this proceeding, unless there be insuperable legal objections in the way. We find a statute of the State, which, by its terms, brings them under the operation of State and city taxation, and we are

bound to give effect to its provisions unless they be in derogation of the Constitution. The unconstitutionality of the act is not pleaded, and we, of ourselves, see no unconstitutional features in it. The rule, **mobilia sequuntur personam**, is a fiction of the law, not resting of itself upon any constitutional foundation, and which gives way before express laws, destroying it in any given case where constitutional requirements themselves do not stand in the way."

This principle was reaffirmed in the case of **Tax Collector vs. Strauss & Co.**, 49 An. 1175.

In 52 An. 1331, the Court said:

"We think the facts of this case bring it squarely under the decisions in **Bluefields Banana Co. vs. Board of Assessors and City of New Orleans**, 49 An. 43, and **Parke vs. Strauss**, 49 An. 1173. In the former case this Court, referring to the corporation claiming exemption, said," and goes on to quote the passage from the **Bluefields Banana** case which we have transcribed above.

Now, in **Metropolitan Life Ins. Co. vs. Board of Assessors**, 115 La. 707, the Court said:

"In **Bluefields Banana Co. vs. Board of Assessors**, reported in 49 An. 43, 25 South. 627, the rule, '**mobilia sequuntur personam**,' was declared to be a fiction of the law, not resting of itself on any constitutional foundation and which gives way before express law, destroying it in any given case where constitutional requirements do not stand in the way.
* * * We see no reason to alter the view so announced. We believe they are in accord with generally accepted judicial opinion In **Blackstone vs.**

Miller, 118 U. S. 126, 23 Supreme Court, 277, 47 L. Ed. 439, the Supreme Court of the United States, referring to the maxim, ***mobilia sequuntur personam***, said that, 'when logic and the policy of the State conflict with a fiction due to historical tradition, the fiction must give way.' There can be no doubt that the seventh section of the Act of 1898, quoted in the judgment of the District Court, announced the policy of the State touching the taxation of credits and bills of exchange, representing an amount of the property of non-residents, equivalent, or corresponding to said bills of credit, which was utilized by them in the prosecution of their business in the State of Louisiana. The evident object of the statute was **to do away with the discrimination theretofore existing in favor of non-residents as against residents, and place them on an equal footing.** The statute was not arbitrary, but a legitimate exercise of legislative power and discretion.

"It is not contested that the State has the right, in consenting to allow foreign corporations to carry on business within her borders, to attach such conditions to such consent as she pleases. The foreign corporations are under no obligations to accept the terms; but, if they do accept them, and carry on business in the State, they must comply with them. They cannot avail themselves of the benefits of the consent and repudiate the obligations attached thereto. The conditions of consent may refer to the matter of taxation, as well as to anything else. When foreign corporations come into the State for business purposes, they are constructively present in the State, and voluntarily place themselves within the jurisdiction of the State and accept and subject themselves to the laws thereof.

“As was said in **Bluefields Banana Co. vs. Board of Assessors**, these foreign corporations do business in Louisiana, transact their business precisely as do resident business men and corporations. They derive all the advantages from the State and city governments which residents receive, and we can see no reason why they should not be taxed as claimed, unless there be insuperable legal objections in the way.”

But stronger than all this is the opinion of your Honors in the case of the **Metropolitan Life Ins. Co. vs. New Orleans**, 205 U. S. 395 (the same case as above), where it is said:

“We are not dealing here merely with a single credit, or a series of separate credits, but with a business. The insurance company chose to enter into the business of lending money within the State of Louisiana, and employed a local agent to conduct that business. It was conducted under the laws of the State. The State undertook to tax the capital employed in the business, precisely as it taxed the capital of its own citizens in like situation. For the purpose of arriving at the amount of capital actually employed it caused the credits arising out of the business to be assessed. We think the State had the power to do this, and that the foreigner doing business cannot escape taxation upon his capital by removing temporarily from the State evidences of credits in the form of notes. Under such circumstances they have a taxable **situs** in the State of

their origin. The judgment of the Supreme Court of Louisiana is affirmed."

Blackstone vs. Miller, 188 U. S. 189; **Bristol vs. Washington County**, 177 U. S. 133; **State Assessors vs. Comptoir**, 191 U. S. 388; **New Orleans vs. Stempel**, 175 U. S. 309, and other cases are cited.

It must be remembered throughout that the "credits" upon which plaintiffs are assessed are property in the fullest sense of the word and there is no denial of this by the plaintiffs. On this subject the Supreme Court of Louisiana in the case of **Standard Marine Insurance Co. vs. Board, etc.**, 123 La. 720, said:

"Outstanding uncollected accounts, it seems to us are rather a common variety of credits. They figure conspicuously in the active mass upon schedules in bankruptcy and inventories of the estates of merchants, they may be utilized for the compensation of debts and seized under execution and they are generally recognized in law and in practice as property and that being the case so long as they have their **situs** in the State of Louisiana, are liable to taxation and are included in the assessments 'all credits' etc.

This differentiates the case at bar from that of **New Orleans vs. New York Life Insurance Company**, 216 U. S. 522, recently decided by your Honors adversely to the taxing power. In that case it was decided that the so-called loans on life insurance policies and premium lien notes were not in reality loans and did not give rise to credits and for that reason could not be taxed as such,

your Honors saying on pages 522 and 523 "Instead of receiving an advance the policy holder may draw upon the reserve value for a premium due, again giving a note, but the transaction is similar in legal characteristics to that which we have described" (policy loans). "It is unnecessary to set out the documents at length because although the same language is not used in all there is no nice question on construction, no doubt possible as to the effect and import of the contracts. In none of the cases is there a loan, therefore no credits to be taxed. In **Metropolitan Life Insurance Company vs. New Orleans**, 205 U. S. 395, so far as appeared, the Insurance Company made loans properly so called to its policy holders and the question now before the Court was not raised or discussed."

We would respectfully refer the Court to the opinion of the Supreme Court of Louisiana, rendered in the case of **General Electric Co. vs. Board of Assessors**, 121 La. 116, and printed in full at page 28 of the Record in the case of **L. & L. & G. Ins. Co. vs. Board**, No. 282, October Term, 1909. In that opinion Mr. Justice Provosty reviews the whole subject of the taxation of credits of foreign corporations doing business in a State other than their domicile and comes to the irresistible conclusion that such credits are taxable in the State of their origin. Says the learned justice:

"There can be no serious question but that the Legislature has provided that credits due upon open

account arising out of business done in this State by non-residents, shall be taxed; and there can be no serious question but that the open accounts in this case have arisen out of business done in this State: the only question must be whether the Legislature has the power to tax credits of that kind.

“If it had not, all we would have to say would be that it was unfortunate that such was the case. For nothing can be more fair or just than that foreigners and foreign corporations should be made to pay the same tax as the resident citizens and local corporations they come in competition with in the business done in this State. The State imposes this tax because of her need of the revenue which is derived from it; she extends to the business the protection of her laws and seeks to make the business bear its just proportion of the burden of taxation. This situation would be, we repeat, unfortunate—not to say deplorable—if the State were left no choice between having to forego this needed revenue, or else handicapping with this tax the business of her own citizens and home corporations in their competition with foreigners for the business to be done here. It ought to stand to reason that there is nothing in the Constitution of the United States, or elsewhere, to sanction such an impolitic, unjust, unfair and unequal conclusion; and we think there is not.”

Opposing counsel in the courts below laid great stress upon the fact that the credits here taxed are “abstract” credits and not reduced to “concrete” form as notes, acceptances, etc., and for that reason are not taxable in the State of their origin. Although we have given much thought to this branch of the case we can imagine no reason for this contention. Indeed it seems to us that

the fact that these credits have not been reduced to "concrete" form gives a firmer basis to the claim of the State. If the credits were reduced to the form of notes, these notes might be withdrawn from Louisiana and thereby give rise to an idea that the credits were placed beyond reach of the taxing power. This impression arose in the case of **Metropolitan Life Insurance Company vs. City of New Orleans**, and your Honors unmistakably negated such a contention. The case of **Buck vs. Beach**, 206 U. S. 392, upholds the doctrine announced in the **Metropolitan case**, and we respectfully refer your Honors to page 405, wherein the Court in discussing the case of **New Orleans vs. Stempel**, 175 U. S. 309, and **Assessors vs. Comptoir**, 191 U. S. 388, says:

"The capital of the owner was thus invested in the State and was thereby subject to taxation there, and the notes did not alter the nature of the debt, but were merely evidences of it."

In **Buck vs. Beach**, the State of Indiana attempted to tax evidences of credits and failed. Here, the State of Louisiana has taxed the credits themselves irrespective of the manner in which they are evidenced or the location of that evidence. We confidently refer your Honors to the opinion of the Court and to the briefs of both counsel in that case as entirely sustaining our position here.

Opposing counsel may cite Louisiana cases to show that the Supreme Court of Louisiana has rendered decisions to the effect that credits of foreign corporations doing busi-

ness in Louisiana are not taxable unless reduced to a "concrete" form. While such may have been the jurisprudence of that Court at one time, it is not so now, for the Supreme Court of Louisiana has decided this case to the contrary, and, also,

National Fire Ins. Co. vs. Board of Assessors et al., 121 La. 108; **General Electric Co. vs. Same**, 121 La. 116; **Liverpool & London & Globe Ins. Co. vs. Same**, 122 La. 198; **New England Mut. Life Ins. Co. vs. Same**, 121 La. 1068; **U. S. Fidelity & Guaranty Co. vs. Same**, 122 La. 139; **Standard Marine Ins. Co. vs. Same**, 123 La. 717.

In the **General Electric case**, the Supreme Court of Louisiana said:

"We fail entirely to understand how it can be said that these open accounts are not within the reach of the taxing power of the State, when they are within the reach of the Civil Sheriff of the Parish of Orleans at the suit of any ordinary creditor of plaintiff, and are within the reach of the Tax Collector, who could, by regular course against them, realize out of them the taxes imposed upon them. Why the open accounts should be sufficiently tangible and concrete to be taxable when due to residents, and too intangible and abstract for undergoing the same process when due to non-residents, we are utterly unable to understand, except on the theory of **mobila sequuntur personam** which, as shown above, is as thoroughly exploded in the law of taxation as the theory of nature abhorring a vacuum is exploded in the law of physics."

We, therefore, submit that the taxation by the State of Louisiana, of property in the form of credits and bills receivable growing out of business done in that State by foreign insurance companies who have a business domicile therein is not violative of the Constitution of the United States or any amendment thereto.

SECOND.

The first paragraph of Section 26, Act 170 of the General Assembly of Louisiana of 1898 provides:

"Be it further enacted, etc., That all tax payers in the Parish of Orleans shall have the right to appear before a standing Committee on Assessments of the City Council of New Orleans between the twenty-first day of March and tenth day of April, inclusive, of the year in which the assessments are made, and in the parishes before the Board of Reviewers as provided for in this act, during the session of said Board and be heard concerning the descriptions of the property listed, and the valuation of the same as assessed; and the Board of Reviewers having considered the claim for relief of the tax-payer shall either approve or disapprove the petition as provided in Section 24, and if disapproved, then the tax-payer shall have the right of testing the correctness of the assessments before courts of justice in any procedure which the Constitution and laws permit; **but the action to test such correctness shall be instituted on or before the first day of November of the year in which the assessment is made.**"

The manner of correction being thus prescribed by statute, the statutory remedy is exclusive. 121 U. S. 535;

43 Con. 309; 116 Ill. 265; 41 La. An. 1046; 23 Mass. 89; 4 Wend. (N. Y.) 223.

The demands to correct the assessments herein complained of for the years 1906 and 1907 were judicially made in August, 1908, and to those demands the defendants pleaded an exception of no cause of action and prescription.

As these two defenses are, in the present case, closely related, we shall argue them together.

There is no question but the demands were instituted after the right to seek a reduction had been barred by the statute of limitations, although, of course, the suit for cancellation, was not.

The Supreme Court of Louisiana, in **Railroad vs. Pecot, Sheriff et al.**, 50 La. An. 743, has shown the distinction between an action to cancel and one to reduce assessments as follows:

“A distinction is to be drawn between suits to correct an assessment, and suits which go to the inherent validity of the assessment and to the legality of the tax based thereon.

“Those of the **first class must be instituted within the time fixed by statute.** Those of the latter class are not subject to such time limit.” (Black-letter ours.)

In that case the plaintiff, in order to take its demand out of the statute of limitations (page 738)

“insists that the complaint is not of an over-assessment, but of a void assessment; that it is not a suit to reduce an assessment nor to correct an assess-

ment for misdescription or other irregularity, but one to have the assessment of certain property declared void for radical defects and to enjoin the collection of taxes predicated on the illegal and void assessment on the ground that being based on an illegal assessment, the taxes themselves are illegal."

much the same as has been attempted in the case at bar. But the Court negatived this contention and upheld the statute.

Railway Co. vs. Sheriff, 50 La. An. 1058; 32 An. 157; 34 An. 370; 37 An. 507; 39 An. 296; 42 An. 206; 42 An. 432.

In the well-considered case of **Larkin vs. Portsmouth**, 59 N. H. 26, the Supreme Court of that State said:

"Selectmen and assessors may, for good cause abate any tax assessed by them or their predecessors. If the assessors refuse the person aggrieved having first complied with the provisions of the law requiring a return under oath of his taxable property, may, within nine months after notice of the tax, and not afterwards, apply to the Court for an abatement. (**Gen. Statutes, Clause 53, Secs. 10 and 11.**) If the plaintiff were equitably entitled to relief by reason of accident, mistake or misfortune in his failure to make the required return (**Gen. Stat., Clause 51, Sec. 2**), and by the submission of his sworn statement that it was not within his power to make it (*id.*, **sec. 5**), there is still the statute bar limiting the right of petition to the Court for abatement to the period of nine months from the notice of the tax. **A plain and positive provision of the law can not be disregarded** even for the purpose of correcting gross

injustice. Relief has never been given against the general statutes of limitations to a creditor with a just claim who through mistake or misfortune has failed to seasonably bring his action (**Peabody's Petition**, 40 N. H. 342), and the special statute limiting the time within which a petition for the abatement of an unjust tax must be brought is as binding as any other statute. The petition was presented too late and can not be entertained."

The same Court in 30 Atl. Rep. 345, in discussing a like case said:

"As a petition for abatement must be presented notice of the tax * * * it is now too late to make the application, and Downing can have no relief. **Larkin vs. Portsmouth**, 59 N. H. 26. Case discharged."

This Court has said:

"Statutes of limitations are in their nature arbitrary, and rest upon no other foundation than the judgment of the State as to what will promote the interests of its citizens. Each State determines such limitations and imposes such restraints as it thinks proper."

Tioga Ry. Co. vs. Blosburgh, Etc., 20 Wall. 137 (22 Law Ed. 337).

"The Statute of Limitations, instead of being viewed in an unfavorable light as an unjust and discreditable defense, should receive such support as will make it what it is intended to be, a statute of repose. It is a wise and beneficial law not designed merely to raise a presumption of payment of a just debt from lapse of time, but to afford security against stale demands after the true state of the transaction

may have been forgotten or be incapable of explanation by reason of the death or removal of witnesses."

Bell vs. Morrison, 1 Pet. 351.

"Statutes of limitations are rules of property, favored in the law and vital to the welfare of society. They promote repose by giving security and stability to human affairs."

Wood vs. Carpenter, 101 U. S. 135.

"It is not to be questioned that laws limiting the time of bringing the suit constitute a part of the *lex fori* of every country."

Hawkins vs. Barney, 5 Pet. 457.

In no manner does this form of taxation, or the assessment herein attacked, violate any Federal law. Plaintiff has been assessed, just as home companies are assessed (see record, in **L. & L. & G. Ins. Co. vs. Board, No. 92, p. 19**), and there is, consequently, no discrimination whatever. That the assessments are excessive we admit, but, for this, plaintiffs have no one but themselves to blame. Whatever injustice plaintiffs suffer as to the quantum of the assessments is due not only to their negligence and carelessness but to their utter disregard and contempt for the laws of the State wherein they come to do business and earn dividends. For the year 1908, the assessments were reduced to what was just and equitable as the suits for reduction were filed in time. For the years 1906 and 1907, the Courts of Louisiana were powerless to grant their demands for a reduction for their right of action had prescribed; the statute of limitations had run, and this statute is as binding as any other.

In the opinion of the Supreme Court of Louisiana in this case, reference is made to an alleged tacit understanding between the counsel for the plaintiff and the taxing officers as to the nonenforcement of these taxes until the decision of a certain case. There was no such tacit understanding: there is no evidence going to support such a claim and such an understanding was, in the very nature of things, impossible, as was decreed by the Court below.

We, therefore, submit that there is in the Federal Constitution no provision which denies the Legislature of the State of Louisiana the right to impose a tax upon the capital of these insurance companies employed in their business in the State of Louisiana, nor is the Legislature deprived of the right to provide the manner in which assessments are corrected, or the time in which it must be done.

When plaintiff, in its petition, alleges that the power of the State Legislature to tax is "limited to persons, property or business within its jurisdiction," it admits the legality of the taxes herein involved.

We respectfully submit that this Honorable Court must affirm the judgment of the learned Court below.

Respectfully submitted,

GEORGE H. TERRIBERRY,
Attorney for Board of Assessors.

H. GARLAND DUPRE,
Attorney for City of New Orleans.

HARRY P. SNEED,
Attorney for John Fitzpatrick, State Tax Collector.

APPENDIX.

“Section 1. Be it enacted by the General Assembly of the State of Louisiana, That for the calendar year A. D., one thousand eight hundred and ninety-eight (1898) and for each succeeding calendar year, there are hereby levied annual taxes amounting in the aggregate to six mills on the dollar of the assessed valuation of all property situated within the State of Louisiana except such as is expressly exempted from taxation by law, and the term ‘property,’ as herein used means and includes all real estate, with the buildings and all other improvements thereon or thereto attached, and all other untaxed land; every share or portion, right or interest, either legal or equitable, in and to every ship, vessel, or boat of whatever name or description, used or designated to be used, either exclusively or partially, in navigating any of the waters within or bordering on this State, whether such vessel, ship, or boat, shall be within the jurisdiction of this State or elsewhere, and whether the same shall have been enrolled, registered or licensed at any Collector’s office or within any Collector’s district in this State or not, including all vessels under a foreign flag navigating any of the waters of this State, within or bordering thereon, controlled or run in whole or in part, for the benefit of the person to be assessed, together with their stores or appurtenances, at their fair market value, or belonging to any person, company, association or corporation, in or out of this State, and not paying taxes at the domicile of the said company, person, association or corporation; all railroads and other roads, all canals and other ways of communication, travel, or transpor-

tation, all locomotives, dummies, and other motive powers; all engines, boilers, and other apparatus, appurtenances, appliances and attachments for steam, electric, and other engines, all telephone and telegraph lines; all machines and machinery; all cars, carriages, wagons and other vehicles; all patents, copyrights, trademarks, privileges, charters and franchises including stock of any lottery charter or privilege domiciled in or out of this State, unless exempted by the Constitution of this State; all lumber, brick and other building materials; all movable property and chattels; all personal property; all goods, wares and merchandise, and other stock in trade, in possession, on hand and under control, goods bought and paid for, goods bought and to be paid for, all goods on consignment for sale, without reference to whom they belong; goods in transit for forwarding; not on consignment for sale are not to be assessed; all alcoholic, vinous and malt liquors; all household, kitchen and other furniture exceeding five hundred dollars (\$500.00) in value; all jewels and jewelry, diamonds, pearls and precious stones, real or imitation; all gold and silverware and silver plate, paintings, engravings, statuary and other works of art, bric-a-brac, and all 'articles of vertu' and ornament, all horses and other live animals; all personal property held in trust, or by a wife, or for a minor child; all property held, controlled, or administered in each separate capacity as president, cashier, treasurer, liquidator, assignee, master, superintendent, manager, sequestrator, receiver, trustee, stakeholder, depository, warehouseman, keeper, curator, tutor, executor, administrator, legatee, heir, beneficiary, father, agent, attorney, usufructuary, mandatory, fiduciary, or official capacity; the cash value of all judgments, suits and causes in

action; all rights, credits, bonds and securities of all kinds; promissory notes, open accounts, and other obligations; all cash. All coins, United States and Foreign, whether current or uncurrent; all currencies, bank notes, and other paper moneys, all moneys loaned at interest, all shares of stock in all banking companies or associations incorporated or non-incorporated, chartered under the laws of Louisiana, or under the laws of any other State than Louisiana, or under the laws of the National Government; and all movable and immovable, corporeal and incorporeal articles or things of value, owned and held and controlled within the State of Louisiana by any person in any capacity whatsoever."

Section 7. Be it further enacted, etc., That it is made the duty of the Tax Assessors throughout the State to place upon the assessment list all property subject to taxation, including merchandise or stock in trade on hand at the date of listing, within their respective districts or parishes; and, if any Tax Assessor shall intentionally or knowingly, or through gross negligence omit any taxable property from the assessment list, or permit the same to be omitted therefrom, he and his sureties **in solido** shall be liable on his official bond for the full amount of the taxes due on the property so omitted from the list, together with ten per cent. per annum interest thereon from the maturity of said taxes, ten per cent. attorney's fees on the amount of the judgment covered against him, and all costs of the suit; provided, that the true intent and meaning of this section is that all crops whether growing or gathered, shall be considered as being attached to the realty while in first hands, and shall not be separately taxed while in possession of the lessor or his agent, and no property shall be taxed twice in the same year; and, provided

further, that in assessing mercantile firms the true intent and purpose of this act shall be held to mean, the placing of such value upon the stock in trade, all cash whether borrowed or not, money at interest, open accounts, credits, etc., as will represent in their aggregate a fair average on the capital, both cash and credit, employed in the business of the party or parties to be assessed. And this shall apply with equal force to any person or persons representing in this State business interests that may claim a domicile elsewhere, the intent and purpose being that no non-resident, either by himself or through any agent shall transact business here without paying to the State a corresponding tax with that exacted of its own citizens; and all bills receivable, obligations or credits arising from the business done in this State are hereby declared assessable within this State, and at the business domicile of said non-resident, his agent or representative. It shall be the duty of the Assessor to examine into and acquaint himself with the insurance carried upon the property, and in determining the value of said stock or assets the average amount of insurance carried by the assured during the twelve months preceding the date of valuation of same shall be by the assessor considered in determining the value of said property.

“Every insurance company doing business in this State shall, on or before the first day of March, in each year, render to the Secretary of State a report, signed and sworn to by its president and secretary of its condition upon the preceding thirty-first day of December, which shall include a detailed statement of its assets and liabilities on that day; the amount and character of business transacted in this State, the moneys received and expended during the year

and such other information and in such form as he may require."

"Section 91. 2. The phrase 'personal property,' or 'movable property,' shall be held to mean and include all things other than real estate, which have any pecuniary value, and moneys, credits, investments in bonds, stocks, shares in joint stock companies or otherwise."

LIVERPOOL & LONDON & GLOBE INSURANCE
COMPANY *v.* BOARD OF ASSESSORS FOR THE
PARISH OF ORLEANS.

ERROR TO THE SUPREME COURT OF THE STATE OF
LOUISIANA.

No. 92. Argued April 18, 19, 1911.—Decided May 15, 1911.

Credits on open account are incorporeal and have no actual situs, but they constitute property and as such are taxable by the power having jurisdiction.

The maxim of *mobilia sequuntur personam* yields to the fact of actual control; and jurisdiction to tax intangible credits exists in the sovereignty of the debtor's domicile, such credits being of value to the creditor because of the power given by such sovereignty to enforce the debt. *Blackstone v. Miller*, 188 U. S. 205. Such taxation does not deny due process of law.

The jurisdiction of the State of the domicile over the creditor's person does not exclude the power of another State in which he transacts his business to tax credits there accruing to him from resident debtors, and thus, without denying due process of law, to enforce contribution to support the government under whose protection his affairs are conducted.

221 U. S.

Argument for Plaintiffs in Error.

Credits need not be evidenced in any particular manner in order to render them subject to taxation.

Premiums due by residents to a non-resident insurance company and which have been extended, but for which no written obligations have been given, are credits subject to taxation by the State where the debtor is domiciled; and so *held* that the statute of Louisiana to that effect is not unconstitutional as denying due process of law.

In a suit for cancellation of an entire assessment as unconstitutional the plaintiff cannot ask for a reduction of amount if there is a proceeding under the state statute for that purpose and which he has not availed of.

122 Louisiana, 98, affirmed.

THE facts, which involve the power of a State to tax premiums of insurance due by residents to a non-resident insurance company which have been extended but not evidenced by written instrument, and the constitutionality of a statute of Louisiana to that effect, are stated in the opinion.

Mr. Monte M. Lemann and Mr. Alexander C. King, with whom Mr. Harry H. Hall and Mr. J. Blanc Monroe were on the brief, for plaintiffs in error:

A State cannot legally impose an assessment and tax upon premiums due under open account by local policy holders to non-resident or foreign insurance companies. Such assessment and tax would be a taking of property without due process of law, in violation of the Fourteenth Amendment. *St. Louis v. Ferry Co.*, 11 Wall. 429; *Louisville &c. v. Kentucky*, 188 U. S. 385, 398; *State Tax on Foreign-Held Bonds*, 15 Wall. 300; *Kirtland v. Hotchkiss*, 100 U. S. 491; *United States v. Erie*, 106 U. S. 327; *Hagan v. Reclamation*, 111 U. S. 701; *Pullman Palace Car Co. v. Pennsylvania*, 141 U. S. 18; *Erie R. R. v. Pennsylvania*, 153 U. S. 628; *Savings Society v. Multnomah*, 169 U. S. 421; *Dewey v. Des Moines*, 173 U. S. 193; *New Orleans v. Stempel*, 175 U. S. 309; *Bristol v. Washington County*, 177 U. S. 133; *Blackstone v. Miller*, 188 U. S. 189; *Board of Assessors v. Comptoir National*, 191 U. S. 388; *Metropoli-*